



North Carolina Department of Transportation
Division of Highways

Right of Way

Right of Way Manual

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Chapter 1 INTRODUCTION

1.01 FOREWORD

The purpose of this Manual is to consolidate information and instructions as to the organization, operation, policies and procedures of the Right of Way Branch, a unit within the Division of Highways, of the North Carolina Department of Transportation, hereafter referred to as the Department.

Revisions to this Manual will be coded in accordance with the index system of the Manual. The right of way employee is encouraged to read and study the entire Manual and not to rely on any one section as being complete for a particular operation, as some operations may be covered in one or more sections of the Manual.

Suggestions about how to improve or streamline our procedures and any constructive criticism will be welcomed from all right of way personnel.

1.02 THE RESPONSIBILITY OF THE RIGHT OF WAY EMPLOYEE TO THE PUBLIC

All Right of way employees should constantly bear in mind that the good will of the public toward the Department and to state government depends upon their attitude, conduct, and actions toward the people with whom they are dealing. They should also, at all times, remember that they have a dual responsibility; that is, to see that the individual property owners receive just compensation and are advised of their rights, and at the same time, to remember that they represent all of the people of the state in their capacity as taxpayers and to see that public funds are spent wisely. They should, under even the most trying conditions, remain courteous and retain an open mind in dealing with those people from whom right of way is being acquired.

1.03 CODES OF ETHICS

By reason of the human aspects of the work, it is believed that personnel engaged in right of way acquisition should be governed by a code of ethics. Codes of Ethics have been formulated by the International Right of Way Association and by the Appraisal Institute to guide the actions of individuals engaged in the right of way profession. All Right of Way Employees are encouraged to adhere to the following Code of Ethics.

The **Code of Ethics of the International Right of Way Association** is quoted as follows:

RECOGNIZING the responsibility of our profession to the people and business of our country, and believing that we should encourage and foster high ethical standards in our profession, we do hereby adopt the following CODE OF ETHICS for our constant guidance and inspiration predicated upon the basic principle of truth, justice, and fair play.

1. To show faith in the worthiness of our profession by industry, honesty, and courtesy, in order to merit a reputation for high quality of service and fair dealing.
2. To add to the knowledge of our profession by constant study and to share the lessons of our experience with our fellow members.
3. To build an ever increasing confidence and good will with the public and our employers by poise, self-restraint, and constructive cooperation.
4. To ascertain and weigh all of the facts relative to real properties in making an appraisal thereof, using the best and most approved methods of determining the just and fair market value.
5. To conduct ourselves in the most ethical and competent manner when testifying as an expert witness in court as to the market value of real properties, thus meriting confidence in our knowledge and integrity.
6. To accept our full share of responsibility in constructive public service to community, state and nation.
7. To strive to attain and to express a sincerity of character that shall enrich our human contacts, ever aiming toward that ideal -- "The Practice of the Golden Rule".

1.04 NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ETHICS POLICY,

Revised 8/1/2007, Reviewed 3/1/2010

Preamble

The holding of a public office by appointment or employment is a public trust. Independence and impartiality of public officials and employees of the Department of Transportation are essential to maintain the confidence of our citizens.

The members of the Board of Transportation, officers and employees of the North Carolina Department of Transportation have a duty to the people of North Carolina to uphold the public trust, prevent the occurrence of conflicts of interest, and endeavor at all times to use their position for the public benefit.

To this end, members of the board, officers, and employees of the Department of Transportation shall ensure that an atmosphere of ethical behavior is promoted and maintained at all times.

Introduction

The major transportation functions of the North Carolina Department of Transportation (NCDOT) include highways, public transportation, motor vehicles, railways, bicycles, pedestrian facilities, aeronautics and ferries. The NCDOT is statutorily responsible for providing the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law, including the registration of transportation vehicles and driver's license. It is in the public interest to establish policies on ethical conduct which set forth a code of behavior to be followed by employees of the NCDOT that is consistent with federal and state laws, as well as related Department policies. These policies on ethical behavior are intended to guide the actions of all employees of NCDOT.

Employees of the NCDOT are expected to maintain and exercise the highest ethical standards of conduct in the performance of their duties and responsibilities, and as a condition of employment shall abide by this policy. Employees of the NCDOT are expected to conduct themselves in a manner that prevents all forms of impropriety, to include but not limited to, placement of self-interest above public interest, partiality, prejudice, favoritism and undue influence.

This policy applies to all employees of the NCDOT and shall be brought to the attention of each employee during orientation and through annual training by Human Resources. Failure to comply with this policy will be grounds for disciplinary action up to and including dismissal.

Definitions

1. Conflict of interest - A conflict of interest arises when an employee's private interest, usually of a personal, financial or economic nature, conflicts or creates the appearance of a conflict with the employee's public duties and responsibilities.
2. Gift - A gift is anything of value given without compensation.

3. Favor - A favor is any opportunity, service, accommodation, use of facility, or other benefit made available for less than fair market or normal value given in exchange for being influenced in the discharge of one's duties and responsibilities.
4. Employee - Employee for the purposes of this policy shall mean both State officer and employee holding an office or employment with the North Carolina Department of Transportation.
5. Family - Family for the purposes of this policy includes spouse, you and your spouse's children, parents, in-laws, step-parents, step-child, step-sibling, grandchildren, brother, sister, uncle, aunt, first cousin, also any dependent person living in the same household.

I. Conflict of Interest

No employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or activity that is in conflict or could appear to be in conflict with the proper discharge of his or her duties. An appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the employee's ability to protect the public interest, or perform public duties, is compromised by personal interest. Examples of conflict of interest are as follows:

A. Misuse of Official Position

No employee shall use or attempt to use his or her position with the NCDOT to secure unwarranted privileges or advantages for himself, herself or others.

B. Contracts and Purchasing Order Agreements

No employee authorized to draft, negotiate, administer, accept or approve any contract, subcontract or purchase order agreement on behalf of the State, or any member of his/her family, shall have, directly or indirectly, any financial interest in such contract, subcontract or purchase order agreement.

In an effort to avoid the appearance of impropriety while conducting the public's business, employees will be restricted from accepting any employment or engaging in any relationship following their employment with NCDOT with any business entity in connection with any

contract, subcontract or purchase order agreement that they participated in any of the following activities:

1. Drafting the contract, subcontract or purchasing order agreement;
2. Defining the scope of the contract, subcontract or purchasing order agreement;
3. Selection of the business entity for services;
4. Negotiation of the cost of the contract, subcontract or purchasing order agreement, including calculation of man-hours, fees or extent of services;
5. Administration of the contract or purchase order agreement.

This section is not intended to prohibit employment with a business entity if the employment is on work other than the specific contract, subcontract or purchase order agreement with which they were involved. An exception to this section of the policy may be granted when recommended by the Secretary of Transportation and approved by the Board of Transportation.

C. Real/Personal Property

No employee or member of his/her family shall use an employee's position to profit from, directly or indirectly, an interest in real or personal property.

D. Business Opportunities

No employee or member of his/her immediate family shall accept any business or professional opportunity when such person knows, or reasonably should know, that the opportunity is being afforded to them with the intent to influence the performance of the employee's official duties.

E. Outside Employment and Activities

In accordance with NCDOT Secondary Employment policy, the employment responsibilities to the State are primary for any employee working full-time and other employment in which that person chooses to engage is secondary. An employee shall have the approval from the division, branch or unit manager before engaging in any secondary employment.

No employee shall accept employment or render services for any private or public interest when that employment or service is in conflict

with the discharge of his or her official duties or when that employment may tend to impair his or her objectivity or independence of judgment in the performance of such duties or induce them to disclose confidential or any information gained through their State duties.

F. Use of Information

No employee shall, directly or indirectly, use, disclose, or allow the use of official information which was obtained through or in connection with his or her official duties and which has not been made available to the general public for the purpose of furthering the private interest or personal profit of any business entity or person, including the employee.

II. Gifts and Favors

No employee shall knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the employee or for another person, in return for being influenced in the discharge of the employee's duties and responsibilities.

No employee shall solicit for a charitable purpose a gift from a subordinate employee, except as provided in NC General Statute, Section [138A-32 \(b\)](#).

No employee shall solicit or accept, directly or indirectly, on behalf of himself or herself or family member, any gift or favor from a contractor, subcontractor, vendor, supplier, lobbyist or any other individual or other business entity that:

1. Has or is seeking to obtain contractual or other business or financial relations with the Department;
2. Conducts operations or activities that are regulated by the Department;
3. Have interests that may be substantially affected by the performance or non-performance of the employee's official duties.

Exceptions to this section, gifts and favors, are noted in [NC General Statute, Section 138A-32 \(e\)](#).

Any such gift or favor received from a contractor, subcontractor, supplier, lobbyist or any other individual or other business entity must be reported and remitted immediately through the appropriate chain of command to the Secretary of Transportation.

III. Consultation

Employees are urged to consult with the Division of Human Resources, Classification, Compensation & Policy Unit staff when an ethical question arises under this policy.

IV. Distribution and Training of Ethics Policy

A copy of this policy will be presented to all new employees at the time of employment and posted in a conspicuous place throughout the Department and made available on the NCDOT web site. Training shall be provided by Human Resources every other year.

V. Enforcement and Compliance

This policy will be enforced by the Secretary of Transportation. Failure to comply with the above policy will be grounds for disciplinary action up to and including dismissal from employment with the NCDOT. Conflicts of interest or unethical behavior that defrauds the Department, vendor, contractor, subcontractor, or supplier may also be violations of criminal law and may result in criminal prosecution.

VI. Disclosures

Any employee who identifies a conflict of interest shall disclose the same promptly in writing through appropriate management channels to the Secretary of Transportation.

1.05 STATUTES GOVERNING CONDUCT & POLITICAL ACTIVITY OF EMPLOYEES

Conduct of employees is governed by the following statutes:

G.S. 136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors and others.

(a) It is unlawful for any person, firm, or corporation to directly or indirectly corruptly give, offer, or promise anything of value to any officer or employee of the Department of Transportation or member of the Board of Transportation, or to promise any officer or employee of the Department of

Transportation or any member of the Board of Transportation to give anything of value to any other person with intent:

(1) To influence any official act of any officer or employee of the Department of Transportation or member of the Board of Transportation;

(2) To influence such member of the Board of Transportation, or any officer or employee of the Department of Transportation to commit or aid in committing, or collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and

(3) To induce a member of the Board of Transportation, or any officer or employee of the Department of Transportation to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the Board of Transportation, or any officer or employee of the Department of Transportation, directly or indirectly, to corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:

(1) Being influenced in his performance of any official act;

(2) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and

(3) Being induced to do or omit to do any act in violation of his official duty.

(c) The violation of any of the provisions of this section shall be cause for forfeiture of public office and shall be a Class H felony which may include a fine of not more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of the thing of value whichever is greater.

G.S. 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.

No member of the Board of Transportation shall be eligible to any other employment in connection with the Department of Transportation, and no member of the Board of Transportation or any salaried employee of the Department of Transportation shall furnish or

sell any supplies or materials, directly or indirectly, to the Department of Transportation, nor shall any member of the Board of Transportation, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the Department of Transportation, or profit in any manner by reason of his official action or his official position, except to receive such salary, fees and allowances as by law provided. Violation of this section shall be a Class I felony which may include a fine of not more than twenty thousand dollars (\$20,000), or three times the value of the transaction.

Political activity of employees is governed by the following state statutes:
G.S. 136-13.1. Use of position to influence elections or political action.

No member of the Board of Transportation or any officer or employee of the Department of Transportation shall be permitted to use his position to influence elections or the political action of any person.

G.S. 126-13. Appropriate political activity of State employees defined.

As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary state employee shall:

1. Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
2. Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a Class I misdemeanor.

G.S. 126-14. Promise or threat to obtain political contribution or support.

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

1. a State employee subject to the Personnel Act,
2. a probationary State employee,
3. a temporary State employee, or
4. an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in [G.S. 163-278.6](#), or political party or to change the party designation of his voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to a person listed in subdivisions (1) through (4).

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of

[G.S. 126-35](#), 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution.

G.S. 126-15. Disciplinary action for violation of Article.

Failure to comply with this article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office.

Political activity of employees is governed by the following federal statutes.

The Hatch Act ([5 U.S.C. 1502, 1503](#)) reads in part as follows:

1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not

1. use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
2. directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
3. be a candidate for elective office.

1503. Nonpartisan candidacies permitted

Section 1502(a) (3) of this title does not prohibit any State, local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

1.06 OUTSIDE OR SECONDARY EMPLOYMENT

Outside or secondary employment by Department personnel is governed by the North Carolina Office of State Personnel PERSONNEL MANUAL, Secondary Employment,

Secondary Employment Policy (updated 1/19/2011)

Purpose

The employment responsibilities to the State are primary for any employee working full-time; any other employment in which that person chooses to engage is secondary. An employee shall have approval from the agency before engaging in any secondary employment. The purpose of this approval procedure is to determine that the secondary employment does not have an adverse effect on the primary employment and does not create a conflict of interest. (i.e., a conflict between the private interests and the official responsibilities of the employee) These provisions for secondary employment apply only to non-State sources of income and do not include a second job or assignment paid from State funds; those conditions are covered by the policy on Dual Employment.

Secondary employment shall not be permitted when it:

- Creates either an actual or perceived conflict of interest, or the potential for a conflict of interest, with the primary employment.

- Impairs in any way the employee's ability to perform all expected duties, to make decisions, and carry out in an objective fashion the responsibilities of the employee's position.
- Involves the use of State equipment, facilities, resources, technology or work hours.

Submission of Request

An employee shall submit a completed PO-102RequestforSecondary Employment form for Branch/Unit/Division/Section Head approval prior to engaging in secondary employment. The completed secondary employment request form shall include the following:

A. Contents of Request

1. A description of the nature of the work or activity.
2. A description of the employer's business and name of the business, or if self-employed, the nature of the employee's business. If a co-owner of a business, the name of the co-owner(s) and whether the co-owner(s) is a current state employee or does business with the State and of what state agency or university.
3. If self-employed, the names and addresses of proposed clientele, unless such disclosure would violate a statutory client privilege or a professional code of ethics. In cases where client confidentiality is necessary, the employee shall provide non-identifying client information sufficient to enable management to determine whether there would be a conflict with the primary employment.
4. The expected schedule and number of hours worked per week and the anticipated duration of the employment.
5. Other relevant information deemed necessary by agency management to render a fair and informed decision on the request.

The request shall be submitted through supervisory channels for review and action by the Branch/Unit/Division/Section head.

B. Approval/Disapproval

The decision to approve or disapprove the request shall be given to the employee in writing within 15 calendar days of receipt of the secondary employment request.

Approval

An approved request shall specify any conditions or approved requirements associated with the approval. In the case of self-employment activity, the employee is required to give advance notice of and secure approval for work for individual clients if there is potential for conflict of interest. The Branch/unit/Division/Section head is responsible for reviewing the approved secondary employment form upon promotion, transfer, or changes in the employee's classification.

Disapproval

Disapproval or discontinuation of secondary employment by a Branch/Unit/Division/Section head shall include the specific reason(s) for the disapproval or discontinuation. The Branch/Unit/Division/Section head's decision shall be final. Denial or discontinuation of secondary employment is not grievable under the department's employee grievance policy.

C. Questions

The Branch/Unit/Division/Section heads are responsible for ensuring compliance with this directive. Questions about whether an employee's secondary employment has potential for conflict of interest shall be forwarded in writing to the Human Resources Director for consideration.

The Branch/Unit/Division/Section head shall prepare a written statement of concern which shall include the respective employee's attached secondary employment request form. The Human Resources Director shall seek the review of the State Personnel Director when a secondary employment request has potential for conflict of interest.

Violations/Noncompliance

Failure to comply with the Secondary Employment policy or abuse of this privilege constitutes a violation of the Secondary Employment request. The approval of this privilege may be revoked. In addition, a violation of this policy shall be considered unacceptable personal conduct as outlined in the Disciplinary Action, Suspension and Dismissal Policy and may be grounds for disciplinary action, up to and including dismissal.

Employee's Responsibility

It is the employee's responsibility to complete a secondary employment form for all employment that is paid from non-State sources of income annually each January. The

employee is responsible for immediately notifying his/her supervisor of any changes in secondary employment activities.

Forms are to be maintained in the Division/Section.

Note: The PO-102RequestforSecondaryEmployment form may be printed from the DOT HR Portal.

Policy

Employees of the Right of Way Branch may accept gainful outside or secondary employment to be performed in off-duty hours, but only where such employment involves no direct or indirect conflict of interests, does not affect in any way the normal competency of the employee in the regular performance of his/her job responsibilities, and only where permission for such employment has been granted in writing by the Branch Manager. Furthermore, the employee may not be called off his regular job during working hours and will not be permitted to use leave of absence for the performance of any outside or secondary work. Outside or secondary employment may not exceed 20 hours per week.

In regard to the above policy, outside or secondary employment by Right of Way personnel is generally discouraged for the reason that Right of Way personnel must make themselves available to discuss right of way acquisition activities and problems with property owners at the convenience of the property owner. Frequently, property owners employed in industry may not be able to leave their work to discuss personal business during working hours, and it is necessary that any contacts with them be made after normal working hours or on Saturdays or Sundays. The successful Right of Way Agent must always bear in mind that the convenience of the property owner must always be considered.

1.07 CONFLICT OF INTEREST

As defined in the North Carolina Department of Transportation's Ethics Policy, a conflict of interest is a situation in which an employee's private interest, usually of a financial or economic nature, conflicts or raises a reasonable question of conflict with the employee's public duties and responsibilities.

In order to avoid any possible conflicts of interest, the Right of Way Branch has adopted the following policy guidelines for all Right of Way personnel to adhere to:

1. All Right of Way personnel shall refrain from the acquisition, either directly or indirectly, of any improvements or land residues which are acquired by the North Carolina Department of Transportation in connection with highway projects and offered for sale. Many times the owner retains the improvements or

purchases them back from the Department. In these cases, employees are prohibited from making arrangements with the owners for the employee's personal acquisition of any improvements which they may retain. Right of Way personnel are required to sign affidavits or other type certifications indicating that they have no direct or indirect, present or contemplated personal interest in Right of Way claims in which they are involved. A potential conflict of interest exists if they engage in the acquisition of improvements or land residues.

2. No Right of Way personnel may engage in the sale of real estate as a broker or salesperson.

3. Any outside fee appraisal work done by a staff appraiser or employee of the Right of Way Branch who otherwise holds a State certification or license to perform appraisals will be subject to the following limiting conditions:

a. No employee of the Appraisal Section or employee of the Right of Way Branch who otherwise holds a State certification or license to perform appraisals will be permitted

(1) to accept an assignment from any other condemning authority or from any individual or corporation or other entity that will require his testimony in court. It should be thoroughly understood between the appraiser and the entity employing his/her services that he/she will not be required to testify in court by reason of this appraisal, and a statement to this effect should be incorporated as a limiting condition in the appraisal.

(2) to accept an assignment that will involve any conflict of interest in any way, shape, or form. Before accepting an assignment, the appraiser must carefully check to ascertain that the parcel he/she is to appraise will not be involved in any highway project at present or in the foreseeable future.

(3) to accept an assignment from any fee appraiser employed by the Department.

b. Appraisals for mortgage loan purposes will generally be permitted, as long as the assignment meets all of the other requirements set out herein.

c. The volume of outside work done by any branch employee must not be such that it will interfere with, or impair the efficiency of the employee in the regular performance of his job with the Department.

d. All outside employment must be done in regular off-duty hours and must not involve the use of Department vehicles, office equipment or any other state-owned property.

e. No leave of absence may be granted to the appraiser or branch employee for

the purpose of outside employment under any circumstances, nor will accumulated vacation be granted specifically for the purpose of accepting outside work.

f. In order that the Department may be fully informed as to the extent of the appraiser's outside work, each employee must, upon completion of an appraisal, so advise the State Appraiser, along with the approximate number of hours he worked on the appraisal.

1.08 DIARY OF DAILY ACTIVITIES

All R/W Agents, Trainees, Aides, and Senior Agents are to maintain a diary of their daily activities. For this purpose each employee is furnished with a loose-leaf binder and prepared filler sheets. The R/W Employees above should complete the routine items in the printed spaces, as well as provide a brief summary of their work for the day, such as properties visited and for what purpose, the names of persons contacted and for what purpose, office activities, etc., leave time taken. Should the R/W Employee work on Saturdays, Sundays or a legal holiday, a diary sheet for that day should be completed. The diary sheets should be kept in the Division R/W Office for review by Supervisory personnel. This daily diary is separate from the negotiating diary completed for each parcel. Daily diaries should be kept for a minimum of 5 years.

Chapter 2 THE RIGHT OF WAY UNIT

2.01 ORGANIZATION

The Right of Way Unit is located in the Field Support Unit of the Division of Highways of the North Carolina Department of Transportation and is under the direction of the Right of Way Unit Manager. The chain of command above the Right of Way Unit Manager, in ascending order, is the Director of Field Support, the Chief Engineer, the Secretary of Transportation.

The Right of Way Unit is composed of the Right of Way Unit Manager's office and three units, being the Appraisal unit, the Negotiating Unit, and the Administrative Unit. The Right of Way Unit receives legal assistance and advice from the Department of Justice – Attorney General's Office – Transportation Section.

2.02 RIGHT OF WAY UNIT DUTIES

The Right of Way Unit is responsible for the acquisition and clearance of needed rights of way for all highway construction and improvement projects on the State Highway System. The general duties and functions of the Right of Way Unit are as follows:

1. To acquire all rights of way for highway Transportation Improvement Projects (TIP projects) as shown on plans prepared for the Highway Design Unit and approved for acquisition by the Department of Transportation and for all other projects, such as traffic, urban, spot safety, division design/construct, etc., that are approved by the Department.
2. To acquire all rights of way on Secondary Roads according to priorities established by the Division Engineers.
3. To acquire all other lands or interest in lands needed by the Department of Transportation upon its authorization for such purposes as wetland and environmental mitigation and permits, material sites, storage areas, haul roads, etc., and, if requested, to arrange through the Department of Administration for the purchase, or lease, of other lands needed for highway operational purposes such as shop sites, office sites, etc.

4. To maintain adequate records of acquired rights of way and their costs, especially for reimbursements from the Federal Highway Administration.
5. To arrange for the sale or other disposition of buildings or other improvements acquired in connection with rights of way to the end that rights of way are cleared for construction and that the Department receives a maximum return on its investment.
6. To arrange for the sale or other disposition of real property such as buildings, land remnants, or residues acquired in connection with rights of way, which are determined to be surplus and no longer necessary for highway use.
7. To insure that asbestos, hazardous wastes and other contaminants within the rights of way on highway projects have been identified and satisfactorily remediated in accordance with state and federal regulations.
8. To furnish relocation assistance, including financial assistance, to persons and businesses displaced by right of way acquisitions and to make payments for moving costs of personal property and other incidental costs related to the right of way acquisitions.
9. To arrange for the rental and management of properties acquired in conjunction with right of way acquisition.
10. To assist the Utility Section as needed with the relocation of utilities in conflict with highway construction.
11. To process encroachment contracts with the owners of encroaching utilities or structures after investigations and recommendations have been completed by appropriate engineering personnel.
12. To administer the Highway Beautification Act to include sign removal, junkyard screening, and scenic easements, if funded.

2.03 THE RIGHT OF WAY UNIT MANAGER

The Right of Way Unit Manager is responsible for the implementation of right of way policies established by the Department and for the administration of all phases of right of way work, and is further responsible for the coordination of work between the Right of Way Unit and other departments, divisions and units of the Department. The **Right of Way Unit Manager and the Assistant Manager of the Right of Way Unit** are authorized and delegated authority by

Resolution of the North Carolina Department of Transportation, dated October 2, 1969, and subsequent revisions, to do the following:

1. Execute all documents pertaining to the acquisition of rights of way, borrow and local material deposits and waste disposal areas.
2. Execute all contracts pertaining to the removal, relocation, alteration and sale of buildings and other improvements to be cleared from right of way and from borrow and waste disposal areas.
3. Execute all certificates required by Federal Highway Administration for reimbursement of right of way costs on Federal Aid Highway Projects.
4. Execute all right of way encroachment agreements and contracts, and utility relocation and cost reimbursement agreements.
5. To approve the payment of all settled claims for right of way and relocation payments up to and including \$500,000.00. All payments of settled claims greater than \$500,000.00 but less than 1 million shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support. All payments of settled claims of 1 million dollars or more shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support and the Chief Engineer and the Secretary of Transportation.
6. For Condemnations: To approve the deposits and additional deposits for condemnations up to and including \$500,000.00. All deposits and additional deposits greater than \$500,000.00 but less than 1 million shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support. All deposits and additional deposits of 1 million dollars or more shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support and the Chief Engineer and the Secretary of Transportation.

Additional functions of the Manager's Office include:

To process all personnel and payroll transactions.

2.04 DUTIES OF THE APPRAISAL UNIT

The Appraisal Unit is responsible for establishing the value of all rights of way and property interests acquired by the Department and providing estimates of right of way costs and property damage for the benefit of Project Development and Environmental Analysis Unit, Programming and TIP Unit, Highway Design Unit and other Preconstruction units of the Department.

The Appraisal Unit is under the direction of the State Right of Way Appraiser. The responsibilities of the **State Right of Way Appraiser** are:

1. Insure the determination of fair market values, through appraisals, for properties and lands being acquired as rights of way for all highway projects,
2. Insure the determination of fair market values, through appraisals, for properties and lands being acquired as rights of way for all highway projects,
3. Insure that all right of way schedules are met with respect to appraisal activities,
4. Examine appraisals on claims to be presented to the Right of Way Review Board,
5. Contract the services of capable, qualified fee appraisers to provide appraisal valuations for acquisitions, as may be necessary,
6. Provide estimates for future TIP projects; including coordination of information from the various right of way units and preparation of requests for right of way cost estimates
7. Insure all appraisals are reviewed for accuracy and compliance with appraisal standards and state and federal laws and guidelines. Approve all appraisals in the amount of \$750,000 and above.
8. Supervise and train staff appraisers in the valuation and review of appraisals,
9. Develop remainder and proximity studies.

The work of the Appraisal Unit is administered through five Area Appraisers Offices staffed in Greenville, Raleigh, Winston-Salem, Charlotte, and Asheville. The five Area Appraisers in charge of the appraisal field offices direct the operations of each field office, supervise assignments of appraisals and their review to staff appraisers, contract with available fee appraisers for fee

assignments involving the appraisal of properties being acquired for highway purposes within their area of responsibility, and to review, recommend and/or approve all appraisals made in the area. Review appraisers will approve all appraisals that are not in excess of \$500,000. Area appraisers may approve all appraisals up to and including 1 million dollars and will recommend approval of appraisals in excess of 1 million dollars to the State Appraiser.

2.05 DUTIES OF THE NEGOTIATION UNIT

The Negotiation Unit is responsible for the negotiation and procurement of rights of way and other lands needed in the operation of the Department and other allied duties, appraisals excepted, and is responsible for the administration of the Department's relocation assistant program and all property management activities. The Negotiation Unit is under the direction of the State Right of Way Negotiator, two Assistant State Negotiators and four Area Negotiators. There are fourteen Division Right of Way Offices throughout the State.

The responsibilities of the **State Right of Way Negotiator and Assistant State Negotiators** are:

1. Direct all negotiation and relocation activities involved in the acquisition of all rights of way and real estate
2. Implementation and administration of the guidelines and regulations of the Department's relocation assistant program established by the Uniform Relocation and Real Properties Act of 1970 and its revisions
3. Relocation of displacees and the clearance of said rights of way to insure timely project lettings
4. Insure that all relocation activities which include the services provided to residential and business relocatees, the payment of moving costs for both residential and business moves, and the supplemental payments to both owners and tenants to enable them to purchase or rent appropriate substitute properties comply with the Uniform Act provisions and the Federal Code of Regulations. The Department's relocation assistant program is outlined in Chapter 15 of this Manual.
5. Assist the Real Property Agent with the Department's asbestos investigation and abatement program, the inventory and sale of residues, the sale and disposal of acquired buildings that must be cleared from project rights of way prior to construction, the sale of surplus properties, and the rentals and management of acquired properties prior to project clearance and letting. Several of the property management functions, such as the exchange of residues, the disposal of surplus properties,

contracting of asbestos investigations and abatements, sale and/or disposal of buildings, are handled by the Division Right of Way Offices after approval of the contract or activity by the Real Property Agent in the Raleigh Right of Way Office. The Department' property management program is outlined in Chapter 14 of this Manual

6. Supervises the activities of the Area Negotiators and provide technical guidance and direction to each of the fourteen Right of Way Offices located in the fourteen engineering divisions
7. Coordinate the distribution of preliminary and final project right of way plans and revisions received from the Highway Design Unit to the respective right of way units and to the respective Register of Deeds Offices after project lettings.
8. Process requests for the purchase of specific parcels and advance acquisitions.
9. Research old records and projects for existing rights of way, construction features, relocations records, and property management records
10. Prepare necessary departmental budgets
11. Coordinate information from the various right of way units and prepare all requests for right of way cost estimates
11. Prepare preliminary and final Board of Transportation resolutions and agenda items.
12. Prepare preliminary and final Board of Transportation resolutions and agenda items.

The duties and responsibilities of the **Area Negotiators** are:

1. to see that right of way acquisition schedules are met to facilitate timely lettings
2. to assist in the supervision and training of Division Right of Way personnel
3. to advise the Division Right of Way personnel on procedural matters and to assist with the negotiation of difficult acquisitions
4. to be a liaison between the Division Right of Way Offices and the State Negotiator, the Real Property Agent, the Relocation Coordinator, the State

- Appraiser, the Raleigh Central Office and other DOT Units and units
5. to represent the Right of Way Unit and assist the Attorney General's Office in the mediation of cases in condemnation
 6. to assist the division right of way office with management of all consultant and Design Build right of way activities within his/her assigned divisions

The **Division Right of Way Agent** is the manager of his/her respective Right of Way Office and through their assigned R/W Agents, Trainees, Aides and Processing Assistants the Division R/W Agent is responsible for the following:

1. To participate in public hearings, workshops, public meetings, and planning meetings related to future and current highway projects
2. To participate in on-the-ground plan inspections, filed inspections, and pre-let meetings and give advice on right of way features that may adversely affect the design or cost of a project, and to familiarize personnel with construction aspects of the project
3. To negotiate for and acquire rights of way and other interests and lands required by the Department for primary highway projects within established schedules
4. To provide relocation assistance for all eligible residential, business and miscellaneous displacees affected by the acquisition of rights of way and to facilitate relocation of displacees from the right of way within established project schedules
5. To secure rights of way on secondary roads within established schedules
6. To collaborate with the Real Property Agent in sale or disposal of structures and buildings acquired with the right of way and the disposal or rental of surplus right of way or residues
7. To collaborate with Utility Unit personnel in the relocation and adjustment of utilities on primary and secondary roads
8. To procure borrow material, topsoil, or other local material, needed for highway construction or maintenance and to assist as needed with the acquisition of wetland mitigation and or stream mitigation areas
9. To assist and collaborate with the Attorney General's Office in the litigation and mediations of condemnation cases

10. To facilitate training, safety awareness, and handle matters for the Division Right of Way Office
11. To approve and submit correct final reports, relocation payment requests and monthly status reports to the Raleigh R/W Office
12. To coordinate, manage and oversee all consultant and Design Build right of way activities within his/her assigned divisions

2.06 DUTIES OF THE ADMINISTRATIVE UNIT

The Administrative Unit is currently supervised by the Assistant Right of Way Unit Manager and is assigned with the following duties and responsibilities:

1. Maintain all records and files pertaining to rights of way acquisitions
2. Coordinate the authorization for funding of projects from Project Management and the Federal Highway Administration among the right of way units
3. Checking all agreements, deeds, leases, instruments of conveyance, files etc., for right of way acquisitions against the project plans for technical accuracy
4. Process all claims for payment for right of way acquisition transactions through the department's Fiscal Unit
5. Prepare progress and final vouchers for submittals to the Federal Highway Administration for reimbursement of federal participation in right of way costs
6. Research old records and projects for existing rights of way, construction features, relocations records, and property management records
7. Procure necessary equipment, forms, and supplies, and to maintain an inventory of it
8. Prepare necessary departmental budgets
9. Prepare preliminary and final Board of Transportation resolutions and agenda items.

2.07 LEGAL- THE ATTORNEY GENERAL'S OFFICE

The staff of the Attorney General's Office assigned to the Department of Transportation and Division of Highways to handle legal matters relating to highways is designated as the "Transportation Section". The Transportation Section of the Attorney General's Office is provided by statute and is headed by a Special Deputy Attorney General who reports to the Attorney General and who, as counsel for the Department of Transportation, works directly with the Secretary of Transportation and the State Highway Administrator and other officials of the Division of Highways.

The Transportation Section of the Attorney General's Office is divided into two Units – the Land Condemnation Unit and the Contract, Claims and Administrative Unit, both headed by Special Deputy Attorney Generals who report to the Senior Deputy Attorney General. The Land Condemnation Unit is divided into a section composed of trial lawyers and ancillary staffers located in Transportation Building at 1 South Wilmington Street in Raleigh with an auxiliary office of the Attorney General located in Asheville, North Carolina. The Contracts, Claims and Administrative Unit, also located in the Transportation Building, is responsible for matters involving personnel, highway engineering and construction and for contracts entered into by the Department. This unit furnishes legal counsel to all Department Heads of the Department Of Transportation in carrying out their duties. All legal services in connection with the acquisition of right of way are provided by attorneys in the Transportation Section of the Attorney General's Office with the exception of title work and closing of right of way acquisitions which are handled mainly by local fee attorneys.

Chapter 3 AQUISITION

3.01 ACQUISITION, GENERAL REQUIREMENTS

The **Constitution of the United States** establishes the fundamental precepts for acquiring private property for public purposes. The **Fifth Amendment** of the Constitution provides:

"No person shall ... be deprived of life, liberty, or property, without due process; nor shall private property be taken for public use without just compensation."

In North Carolina, the statutory provisions pertaining to the acquisition of private property for public purposes, i.e., rights of way are included in [Chapter 136 of the North Carolina General Statutes](#). The highway laws contained in the publication entitled, Transportation and Highway Laws of North Carolina not only outline the statutes for right of way acquisition but also outline other statutes that have a relationship to highway work.

[G.S. 136-19 \(a\)](#). "The Department of Transportation is vested with the power to acquire in the nature of an appropriate easement or in fee simple such rights-of-way and title to such lands . . . by purchase, donation or condemnation . . . "

The "[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended](#)", Public Law 91-646, was passed by Congress in an attempt to make public acquisition of private property and relocation of displaced individuals and businesses as fair and equitable as possible. The Uniform Act applies to all real property acquisitions for projects where Federal funds are involved. The Department of Transportation must be familiar with and adhere to the provisions of this Act, as well as applicable State law, in order to qualify and receive Federal funding on applicable highway projects. The Uniform Act is divided into three sections. Title 1, "General Provisions," covers definitions and important limitations, Title II covers the provisions applicable to Uniform Relocation Assistance, and Title III pertains to the Uniform Real Property Acquisition Policy.

The Federal regulations governing public acquisition and relocation activities have been consolidated into one single Government-wide regulation found in [Title 49, Code of Federal Regulations \(CFR\) Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally](#)

Assisted Programs." Those further statutes and regulations pertaining to acquisition issues not covered in the Uniform Act that are applicable only to the Federal Highway Administration are found in [Title 23, CFR](#)

3.02 STATUTORY PROVISIONS APPLICABLE TO RIGHT OF WAY ACQUISITION

The right of way employee should particularly familiarize himself with the provisions of the statutes and regulations pertaining to right of way acquisition hereafter listed. By specifically citing these sections, it is not intended that other sections of the laws and regulations pertaining to or having a bearing upon right of way should not be read.

The major State laws and statutes that apply to acquisition:

[G.S. 136.18](#) - Powers and Duties of the Department of Transportation
[G.S. 136-19](#), Acquisition of land and deposits of materials; condemnation proceedings; federal parkways
[G.S. 136, Article 9](#). Condemnation. 103-121.1
[G.S. 136-19.3](#) - Acquisition of buildings (partially outside the right of way)
[G.S. 133-5 thru 133-17](#) - Relocation Assistance
[G.S. 136-19.4](#) - Registration of Right of Way Plans
[G.S. 136-19.5](#) - Utility right of way agreements
[G.S. 136-Article 2E](#), Roadway Corridor Official Map Act.
[G.S. 136-55.1](#) - Notice of Abandonment.
[G.S. 136-63](#) - Change or abandonment of roads.
[G.S. 136-Article 4](#). Neighborhood Roads, Cartways, Church Roads, etc.
[G.S. 136-Article 6D](#) -Controlled Access Facilities
[G.S. 47-27](#) - Recording Deeds of Easement
[G.S. 65-13](#) - Removal of Graves.
[G.S. 136.18.3](#) - Location of garbage collection containers by counties and municipalities.
[G.S. 136.18.6](#) -Cutting down trees.
[G.S. 146-22.2](#) - Appraisal of property to be acquired by State

The major Federal laws and regulations that apply to acquisition:

[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646](#). Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA)
[Title 49, CFR Part 24](#), "Uniform Relocation Assistance and Real Property Acquisition For Federal and Federally Assisted Programs.

[Title 23, CFR](#) Parts [710](#), [750](#) and [751](#)

For more detailed information regarding the Federal laws and regulations governing acquisitions, refer to Right of Way Project Development Guide issued by the Federal Highway Administration.

3.03 BOARD OF TRANSPORTATION DELEGATION OF AUTHORITY CONCERNING RIGHT OF WAY ACQUISITIONS

The Board of Transportation has delegated to the Chief Engineer certain powers and duties concerning highway right of way acquisitions which may be sub delegated to the Right of Way Unit:

- A. Negotiate and execute documents on the acquisition and release of rights of way, borrow an local material deposits and waste disposal areas
- B. Award and execute contracts as to buildings and improvements to be cleared from rights of way
- C. Execute United States Department of Transportation right of way certificates.
- D. Execute right of way encroachment and utility relocation agreements
- E. Negotiate and execute contracts with right of way fee appraisers
- F. Negotiate and enter into agreements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

The Chief Engineer has delegated to the Manager of Right of Way Unit and Assistant Manager of Right of Way Unit the following powers and duties:

- (1) to negotiate and execute all documents pertaining to the acquisition of rights of way, borrow and local material deposits and of waste disposal areas and releases of such interests in borrow and local material deposits and waste disposal areas when no longer productive or useful for the purpose acquired: to release interests in land acquired for right of way, but not used nor needed for right of way.
- (2) to award and execute all contracts pertaining to the removal, relocation, alteration and sale of buildings and other improvements to be cleared from highway rights of way, borrow and waste disposal areas, such contracts shall be awarded to the lowest responsible bidder after competitive bidding.

- (3) to execute all certificates required in connection with the request to the U. S. Department of Transportation for reimbursement of right of way costs on federal-aid highway projects
- (4) to execute all right of way encroachment agreements and contracts and utility relocation and cost reimbursement agreements.
- (5) To approve the payment of all settled claims for right of way and relocation payments up to and including \$500,000.00. All payments of settled claims greater than \$500,000.00 but less than 1 million shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support. All payments of settled claims of 1 million or more shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support and the Chief Engineer and the Secretary of Transportation.

For Condemnations: To approve the deposits and additional deposits for condemnations up to and including \$500,000.00. All deposits and additional deposits greater than \$500,000.00 but less than 1 million shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support. All deposits and additional deposits of 1 million or more shall require the approval of the Right of Way Unit Manager or the Assistant Manager of the Right of Way Unit and Director of Field Support and the Chief Engineer.

- (6) to negotiate and execute contracts with fee appraisers required for right of way appraisal
- (7) to negotiate, enter into agreements and execute documents in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and the regulations adopted and promulgated by the Board of Transportation.

The Right of Way Unit Manager and Assistant Manager of Right of Way Unit sub delegate to State Right of Way Appraiser the authority to negotiate and execute contracts with fee appraisers required for right of way appraisal.

The Right of Way Unit Manager and Assistant Manager of Right of Way Unit sub-delegate to Relocation Coordinator and State Administrative Agent of the Right of Way Unit the authority to negotiate, enter into agreements, and executed documents in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and the regulations adopted and promulgated by the Board of Transportation.

3.04 DEPARTMENT OF TRANSPORTATION POLICY FOR ACQUISITION

In general, the Department's policy for acquisition of rights of way on primary and interstate projects mirrors the Federal regulations and requirements established for federally funded acquisitions. The acquisition program requirements are outlined as follows:

- Acquire expeditiously by negotiations
- Afford owner opportunity to accompany appraiser
- Establish Just Compensation amount (through appraisal of property)
- Disregard increase or decrease in value caused by project
- Provide written statement of and summary of basis for Just Compensation
- Owner retains property until paid Fair Market Value or amount deposited in court
- At least 90 days occupancy permitted after acquisition offer made
- If continued occupancy as tenant, rent at market rate
- Coercion prohibited
- Property may be condemned, owner not forced to sue to prove taking
- Offer to acquire uneconomic remnants
- Fully informed owner may donate right of way

The policy of the Department on the improvement of unpaved secondary roads requires that the property owners, at no cost to the Department, donate the necessary rights of way. This policy is based on the premise that the improvement of the road will enhance the value of the property in an amount at least equal to the value of the land necessary for the construction of the road improvement. On this type of project, where no payment is made for land acquired as right of way, the owner may be reimbursed for the value of improvements taken, or the cost of moving same, whichever is the lesser amount.

For secondary roads that are to be added to the State Highway System for maintenance, the property owner is required to donate, at no cost to the Department, the necessary right of way free and clear of all improvements, including utilities.

3.05 INTEREST IN RIGHT OF WAY TO BE ACQUIRED

Generally, the estate or interest in property to be acquired, through negotiations or condemnation, by the Department for rights of way will be fee simple. Exceptions are as follows:

1. Easements for rights of way from State agencies and some Federal Agencies.
2. Easements for rights of way on secondary road additions and improvements.
3. Temporary construction, temporary drainage, and temporary utility easements
4. Slope easements
5. Detour easements
6. Permanent Drainage Easements, Drainage/Utility Easements, Permanent Utility Easements, Aerial Utility Easements
7. Easements for most material pits and haul roads that are secured by lease
8. Permanent Easements for contaminated sites
9. Permanent Construction Easements
10. Conservation easements
11. Easements for specified properties and projects.

3.06 ACQUISITION OF AREAS IN EXCESS OF PROJECT REQUIREMENTS

As a general rule, the acquisition of property in excess of that required for the necessary right of way, slope, utility easements, and drainage easements should be limited to those situations where the excess area is considered uneconomic to the owner because of the project, or where it is in the best interests of the Department to reach a settlement which includes the acquisition of the excess area. **Excess acquisitions, including economic remnants, can only be acquired with the consent of the landowner and not by condemnation and justification for such purchases should be documented.**

3.07 ADVANCE RIGHT OF WAY ACQUISITIONS

1. General.

- a. Advance right of way acquisitions are acquisitions performed by the Department of Transportation for transportation purposes and undertaken on a *parcel-by-parcel* basis prior to the Department

receiving authorization to conduct right of way acquisition for the entire project or project segment. Advance acquisitions typically occur prior to completion of final right of way plans for the entire project or segment.

- b. Advance acquisitions may arise in one of several situations that may include, but are not limited to, the following: a qualifying Undue Hardship; Protective Purchases; complex relocations involving utilities or complex properties; accelerated project construction and/or project letting dates; obtaining/performing conservation or environmental mitigation; other identified high priority project needs, and those situations allowed by law.
- c. The Department has authority to advance acquire property for public purposes, pursuant to [Article 9, Chapter 136](#) of the North Carolina General Statutes. Under N.C.G.S. §§ [136-18](#), [136-19](#), the Department is vested with the power to acquire title to land by purchase, donation, or condemnation, either in the nature of an appropriate easement or in fee simple rights of way that it may deem necessary and suitable for transportation infrastructure construction, including road construction, maintenance, and repair, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable the Department to properly execute the work. The formal procedure for filing condemnation actions to obtain title to land for transportation projects is contained within [N.C.G.S. § 136-103](#), et seq.
- d. The Department may advance acquire right of way using either State or federal funds or both. However, if federal reimbursement or credits for the advance acquisition costs are desired, the Department must obtain approval from the Federal Highway Administration (FHWA) for the acquisition. The Department's and State's guidelines and requirements reflect federal reimbursement requirements. Federal rules relating specifically to Protective Purchases and Undue Hardship acquisitions are contained in [23 C.F.R. §§ 710.503](#); rules relating to advance acquisitions (other than Protective Purchases and Undue Hardship acquisitions) are contained in [23 C.F.R. §§ 710.501](#). Other federal rules and laws may apply as well.

- e. Advance acquisitions are considered to be permissive and not mandatory in nature, and are determined based upon the applicant's submission, and relevant written guidelines, rules, regulations and laws.¹

2. Definitions of Terms Used Herein.

- a. "Acquisition" is the process of obtaining right of way to real property in fee simple or easement either through donation, purchase, or condemnation in connection with a transportation project.
- b. "Advance acquisitions" are acquisitions of right of way involving individual parcels or portions thereof performed prior to the Department's obtaining right of way authorization for the entire project or segment, regardless of whether a state or federal environmental document has been published or approved. However, FHWA classifies advance acquisitions as those occurring *after* publication of the NEPA² document, e.g., Record of Decision. Under FHWA requirements, Undue Hardship acquisitions are not "advance acquisitions" because they typically occur prior to publication of the NEPA document. The Department's definition of advance acquisition is broader in scope than FHWA's and includes any acquisition performed on a case-by-case basis prior to full project-wide right of way authorization.
- c. "Alternative" refers to the project alternatives that were studied during the environmental analysis process. Alternatives may include, but are not limited to, construction of a new highway facility; modification of existing highway facilities; a "no build" alternative that does not involve any construction; or a combination of any of the above.
- d. "Condemnation" is the formal process whereby the Department files court proceedings to condemn, i.e., "take," certain property interests in land for transportation project purposes pursuant to its power of eminent domain.

¹ *Guidance on Hardship Acquisition and Condemnation*, Memorandum by Susan Lauffer, Office of Real Estate Services, FHWA, Nov. 5, 2004.

² National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. § 4321 et seq.).

- e. "Environmental document" refers to any number of documents which must be prepared pursuant to state and/or federal regulations and laws that contain the environmental analysis for the project.
- f. "Undue Hardship acquisitions" are advance acquisitions of particular parcels or portions thereof that are located within or adjacent to an existing or proposed project area that are performed to address an "undue hardship" experienced by a qualifying property owner.
- g. "Negotiations" involve the Department extending an offer to acquire the property based upon a fair market appraisal it has procured. The Department shall allow the owner reasonable time to consider the offer and present any relevant material in response thereto. If the owner desires to obtain an appraisal as an alternative to the Department's appraisal, then he/she should notify the Department in writing of his/her desire to procure a separate appraisal and request a copy of the Department's list of appraisers who are familiar with applicable state and federal eminent domain appraisal requirements. The owner's appraiser must follow the Department's appraisal guidelines (which are based on state and federal laws, regulations and guidelines) in order for the Department to properly consider the appraisal's findings.
- h. "Parcel" is a discrete tract of land under one ownership whose boundaries are typically identified in a deed and/or at the county's tax assessor or GIS office.
- i. "Project" is a broad term and may refer to, among other things, either a parent transportation project or its individual project segments, e.g., R-2000 (parent) and R-2000AA, R-2000AB, and R-2000 B (project segments).
- j. "Protective Purchases" or "Protective Acquisitions" are advance acquisitions of particular parcels or portions thereof performed to address situations where there is an imminent threat of development of property located within or adjacent to an existing or proposed project, and the development could reasonably limit the Department's future transportation choices. Factors to consider for

Protective Purchases may include, but are not limited to, the following: the extent to which the proposed development may conflict with the planned transportation project; the extent to which future relocations and disruptions of persons and businesses may occur, and the potential for significant increases in future right of way acquisition costs.

- k. "Property" refers to land and any legal interests therein.
 - l. "Regular right of way acquisition project schedule" is the proposed project schedule in which funds are projected to be authorized for the Department to begin acquisition of right of way on a project-wide or segment wide basis.
 - m. "Right of Way" is real property and rights therein used for the construction, operation, or maintenance of a transportation or related facility. Right of way can be conveyed in fee simple or easement.
 - n. "STIP" is an acronym for the State Transportation Improvement Program and comprises the Department's multi-year schedule of planned transportation projects across North Carolina that includes right of way acquisition and construction cost estimates, and proposed Fiscal Year funding schedules for right of way acquisition and construction. The cost estimates and dates in the STIP are preliminary and subject to change. The Department is statutorily obligated to establish a list of its STIP projects.
 - o. "Subject property" is the property that is the subject of the acquisition in question.
3. **Categories of Advance Acquisitions.** The Department's advance acquisitions typically fall into one of the below categories and are performed on a parcel-by-parcel, case-by-case basis.
- a. **Protective Purchase acquisitions** are typically initiated by the Department and often involve situations where there is an imminent threat of development of property located within or adjacent to an existing or proposed project and the development could reasonably limit the Department's future transportation choices. A significant

increase in project cost to address the proposed development may be considered as an element justifying a Protective Purchase.

i. **Factors to consider for Protective Purchases, include, but are not limited to, the following:**

1. There must be an imminent threat of development of the subject property or portion thereof that will likely be needed for the transportation project based upon the most currently available project plans. The threat may take several forms, including but not limited to: an owner's submission of a building permit or subdivision approval request to the applicable authority; procurement of development plans and/or sketches; or other actions indicating a threat of imminent development.
2. The subject property or portion thereof is located in the project's preferred location (e.g. the selected alternative identified in the Final EIS) or within a potential alternative that is a good candidate for the final alternative.
3. The project plans must be sufficiently complete to allow the limits of the proposed right of way to be described, and allow the Department to adequately determine whether the subject property or portions thereof will likely be needed for the proposed right of way.
4. The entire property or substantially all of it will likely be needed for the proposed project; or the property's access to a public highway will likely be acquired by the proposed project, leaving the property landlocked.
5. The extent to which the threatened development conflicts with the planned project and the proposed right of way.

6. If a protected transportation corridor is involved, then the Protective Purchase acquisition must be in the best overall public interest. N.C.G.S. § 136-44.53 (b).
 7. The Department's Manager of Right of Way must approve the Protective Purchase before the funding request for authorization will be sent to the Program Development Branch. The Manager will consider the project's design, any financial impacts, and establish a likely need for the Protective Purchase.
 8. Funding must be available and all applicable approvals obtained. If the Department seeks reimbursement or credit for the acquisition costs from FHWA, then federal requirements must be met and the acquisition approved by the FHWA.
 9. The acquisition must not influence the decision of the environmental review process for the project as required under state and federal environmental rules and laws.
 10. All other state, federal, and Department requirements must be met.
- ii. Procedure. After the above factors have been considered, and the Program Development Branch has authorized funding, the Department's right of way agent will contact the owner and discuss purchasing the property based upon a fair market appraisal of the property. The appraised value should not be influenced either positively or negatively by the planned project except as provided by law. If the acquisition cannot be completed, then the Department may initiate condemnation of the property based upon project needs and funding, or may defer condemnation until right of way acquisition for the entire project or project segment is authorized.
- b. Undue Hardship Acquisitions are advance acquisitions of particular parcels or portions thereof that are located within or

adjacent to an existing or proposed project area and are performed to address an “undue hardship” experienced by a qualifying property owner based upon health, safety or financial reasons. Undue Hardship acquisitions are initiated by the owner/occupant of the property by completing a ***Hardship Acquisition Request Form (HARF)*** ([FRM3-F](#)) and attaching supporting documents thereto, and submitting it to the Department.

i. **Factors to consider for Undue Hardship acquisition requests include, but are not limited to, the following:**

1. The Undue Hardship applicant **must complete and submit a HARF** to the Department with supporting information that justifies on the basis of **health, safety or financial** reasons, that remaining in the property poses an undue hardship compared to other owners of properties within the planned project area, **and** the applicant must document an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.³ The hardship condition must be unique to the applicant when compared to other owners of properties located within the planned project area. The request must include documentation from independent sources that support the hardship request.
2. If an Undue Hardship acquisition request is based on **health** reasons, then the request must be accompanied by supporting information that may include, but is not limited to, the following: ⁴
 - a. The applicant or a family member living in the applicant’s household suffers from a severe or debilitating illness, injury or major disability or

³ 23 C.F.R. § 710.503 (c) (2014).

⁴ The hardship examples presented herein do not and cannot cover every possible situation experienced by a person. These examples are offered merely to show what types of situations may justify the Department’s acquisition of property based upon Undue Hardship reasons.

long-term condition that significantly impairs that person's Activities of Daily Living (ADL) and renders present housing facilities inadequate, or extremely difficult to maintain or repair; or the illness creates extraordinary conditions that pose a significant threat to the health, safety, or welfare of the applicant or household family member for whom the applicant is responsible.

- b. Basic ADLs include self-care tasks such as bathing, dressing, eating/feeding, functional mobility (moving from one place to another while performing activities), personal hygiene and grooming, and toilet hygiene.
 - c. The age of the applicant or household members may be taken into consideration.
 - d. Generalized stress and anxiety allegedly caused by the uncertainty of owning property located within the planned project area does not by itself qualify as a justification for an Undue Hardship based upon health reasons.
 - e. Examples of acceptable supporting documentation to support an Undue Hardship acquisition under this category may include, but are not limited to, the following:
Statements or documentation from a treating medical provider (from a medical standpoint) explaining why the patient should be physically relocated from the property due to a health condition; or appropriate disability certification documents.
3. If an Undue Hardship acquisition request is based upon safety reasons, then the request must be accompanied by supporting information that may include, but is not limited to, the following:

- a. The owner/occupant's personal safety is presently at risk if they continue to reside on the property. This may involve, for example, an owner/occupant living in substandard or structurally unsafe housing, or housing that cannot be reasonably modified to accommodate a disability or medical condition.
 - b. Examples of acceptable supporting documentation to support a safety hardship may include, but are not limited to, the following: a statement from an occupational therapist or treating medical provider indicating that current housing facilities are inadequate and pose a present health or safety risk to the applicant or household family member; estimates from a general contractor indicating how much renovations to the applicant's house would cost in order to accommodate a disability or medical condition of a household family member.
 - c. If the request is based on concerns over incidences of crime near the subject property, then the request must be supported by verifiable and objective data showing that the types and rate of crime is substantially different in severity and numbers than experienced by others outside the planned project area.
4. If an Undue Hardship acquisition request is based upon **financial** reasons, then the request must be accompanied by supporting information that may include, but is not limited to, the following:
- a. The applicant's monthly debts and property carrying costs exceed the applicant's monthly gross income, all of which must be verified with supporting documentation.

- b. The applicant is the personal representative of an open estate proceeding and acquisition of the property by the Department would assist in closing the estate. The personal representative must submit to the Department copies of official documents from the county probate office indicating that the estate is open, the full names of the decedent and personal representative and addresses, the date of death and the estate's property inventory.
- c. The applicant's employment has been transferred or terminated, or the applicant, being a military service member, will be or has been deployed.
- d. The applicant cannot afford the maintenance, expenses and debt service of their current residence when their total debts and liabilities are compared to their income.
- e. The applicant's property is subject to a pending mortgage foreclosure or tax sale.
- f. Other financial reasons may exist depending on an applicant's particular circumstances and information provided.
- g. Examples of documentation may include, but are not limited to, the following:
 - i. Copies of signed state and federal income tax returns with worksheets, or official "tax return transcripts" for the previous three years.
 - ii. A financial statement from a certified public accountant describing the financial difficulties.

- iii. A letter from an employer certifying the applicant's change in employment status.
- iv. Applicable court records and documents.
- v. Other documentation that supports the Undue Hardship request.

5. **Other Reasons.** An Undue Hardship request can be based upon a combination of **health, safety, or financial** reasons, or extraordinary or emergency conditions that are not common to other owners within the planned project area. Additional factors to consider may include, but are not limited to, the following: the applicant's age, employment status, wage earning capacity, the need for elder care, nursing or medical assistance, or inability to repair or maintain the property based upon verifiable health, safety or financial reasons. All Undue Hardship requests must be supported by verifiable supporting documentation.

ii. **Additional Undue Hardship Factors.** In addition to the Undue Hardship eligibility factors stated above, the following must be satisfied:

- 1. **Complete HARF.** The HARF must be sufficiently completed, and supporting documents attached thereto from independent sources which confirm the applicant's reasons for the Undue Hardship request.
- 2. **Documentation.** All reasons justifying an Undue Hardship acquisition request must be supported by verifiable documentation from independent sources.
- 3. **Owns and Resides On Property.** The applicant must own the subject property and reside thereon, except in instances where an estate or business are involved. If a business is requesting an Undue

Hardship acquisition, then the applicant should complete a HARF and/or financial statement form supplied by the Department.

4. Present or Imminent Undue Hardship. The applicant must show that continuing to reside on the property until regular project-wide right of way authorization is obtained creates a *present or imminent* Undue Hardship as compared to other owners of property within the planned project area.
5. Marketing The Property. The applicant must document an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.⁵ This requires that:
 - a. The applicant actually listed or marketed the property at fair market value within a time period that is typical for properties not impacted by the impending project;
 - b. The listed or marketed price is consistent with comparable property sales in the local market that are not impacted by the proposed transportation project. Offering the subject property at an unrealistically high price will not suffice.
 - c. The applicant openly marketed the property through a realtor, a listing service or through other verifiable means, and made the property available for inspection by prospective buyers.⁶
 - d. Submission of letters from real estate agents stating, for example, that, “there is no market for the property” or the “property is worthless”

⁵ 23 C.F.R. § 710.503 (c) (2014).

⁶ *Guidance on Hardship Acquisition and Condemnation*, Memorandum by Susan Lauffer, Office of Real Estate Services, FHWA, Nov. 5, 2004.

because of the planned project are insufficient to support an Undue Hardship request.

- e. However, a certification from a licensed real estate agent, for example, stating that the property was formally listed on the open market with a Multiple Listing Service (MLS) for a time period that is typical for properties not impacted by the impending project at a price consistent with comparable properties outside the planned project area may suffice. Other forms of documentation similar to such a certification may also suffice.
6. Design and Need. The Department's plans for the proposed project must be sufficiently complete to allow it to ascertain the limits of the proposed right of way and adequately determine whether the subject property or portions thereof will likely be needed for the proposed right of way.
7. Entire Parcel. If, for example, the planned project's design and proposed right of way contemplate acquisition of the entire parcel (or a substantial portion thereof), a loss of access to a public highway, or causing a validly permitted septic system to fall out of compliance, then an Undue Hardship acquisition may be appropriate. Greater weight is given to the above situations where acquisition of the entire parcel (or nearly all of it) is contemplated based upon the most recently available project plans. Less weight is given to Undue Hardship acquisition requests where the Department would be placed in the position of having to make two acquisitions involving the same property: the advance acquisition for only a portion of the property; and a regular acquisition of the remaining property once project-wide right of way acquisition is authorized later.

8. Eligibility Determination. The Department's Manager of Right of Way must determine whether applicable Undue Hardship eligibility factors are met, after considering the request, supporting documentation, Department and FHWA guidelines and criteria, and consulting with appropriate staff.
9. Funding. Funding must be available and all applicable approvals obtained. If the Department seeks reimbursement or credit for the acquisition costs from FHWA, then federal requirements must be met and the acquisition approved by the FHWA.

iii. **Undue Hardship Acquisition Procedure.**

1. Division Right of Way Office. The property owner (i.e., applicant) must submit a written Undue Hardship acquisition request using the HARF ([FRM3-F](#)) (with supporting documentation attached thereto) to the Division Right of Way office, which will ensure that the HARF is fully completed, with all appropriate documentation attached thereto. If the HARF has not been fully completed by the applicant, then the Division Right of Way Office will notify the applicant in writing of the deficiencies in the HARF. The Division Right of Way agent must utilize an approved worksheet ([FRM3-G](#)) to ensure that appropriate information and documentation have been submitted with the application. Once the HARF is complete, the Division Right of Way Office will forward the HARF and accompanying documents to the Manager of Right of Way for consideration.
2. Manager of Right of Way. The Manager will transmit a letter to the applicant notifying him of the HARF's receipt in the Raleigh office. The Manager is responsible for determining whether the Undue Hardship request meets applicable eligibility guidelines and criteria. The Manager will seek input and recommendations from staff and the Advance

Acquisition Review Committee ("AARC"). The Manager will utilize an approved worksheet to assist in evaluation of the Undue Hardship application. Justification for approval or denial of the request will be noted on the worksheet.

If the Manager approves the request, based upon written guidelines, requirements, and information submitted by the applicant, then the Manager will consult with the Program Development Branch to determine the availability of funding to pursue the acquisition. If funds are available, the Manager will then seek Board of Transportation approval to begin the appraisal and negotiation process with the applicant. The Manager will notify the applicant within a reasonable period of time whether the Undue Hardship acquisition request has been approved or denied.

3. No Coercion. The Department's Right of Way agents and staff must not coerce or threaten the applicant with discontinuing the acquisition process in order to obtain a favorable acquisition price. If the Department or agent knows that advance acquisition (e.g., Undue Hardship or Protective Purchase) will not occur regardless of the outcome of acquisition negotiations, then the Department must notify the applicant soon after receiving the advance acquisition request that advance acquisition will not occur. In essence, the Department must not use the threat to condemn or not to condemn as a means of obtaining a favorable acquisition price. The acquisition price offered to the applicant must be supported by an approved appraisal and any justifiable administrative adjustments.
4. Appraisals. If the applicant notifies the Department in writing that he/she desires to obtain his/her own appraisal in addition to the Department's appraisal, the Department will provide the applicant or his/her appraiser a copy of the Department's appraisal

guidelines (which are based on federal requirements) and inform the applicant that the appraisal should be based upon those guidelines and/or requirements.

5. Negotiations. If advance acquisition negotiations are unsuccessful and terminated, then the Department will notify the applicant in writing that further negotiations for the property's acquisition will be deferred until regular project-wide right of way acquisition has been authorized.

- c. **Advance Acquisitions for Complex Relocations** involve acquisitions that will likely require more than the typically allotted amount of time for relocation of improvements and tenants from the property. These may be performed in certain situations where a select group of properties have been identified during the final right of way plan development stage as involving complex or utility relocations. The primary purpose of these types of acquisitions is to minimize delays in meeting project delivery deadlines that may arise due to delayed relocation of utilities, complex properties, and/or large numbers of tenants, for example.

- i. **Factors to consider include, but are not limited to, the following:**

1. The subject property involves a complex property and/or improvements; a diverse and/or large number of potential displacees; graves; utilities; or other complex relocation issues.
2. Additional time will likely be required to perform the needed relocations, as compared to a typical relocation.
3. The project alternative has been selected and preparation of the final environmental document is either underway or has already been approved.
4. Project wide right of way authorization has *not* been issued, but is scheduled within the near future.

5. Right of Way, Utilities and Roadway Design units agree on the parcels that should be acquired in advance.
 6. Potential future plan changes are unlikely to affect the named parcels.
 7. Applicable approvals have been obtained from, among others, the Right of Way Manager, Director of Field Support, and Program Development Branch.
 8. A “Worksheet for Determination of Advance Acquisitions for Complex Relocations” ([FRM3-J](#)) is completed and submitted to the Project Management Unit for each individual parcel listing the reason the parcel needs to be acquired in advance.
 9. A “Funding Request Exception Form for Advance Acquisitions for Complex Relocations” ([FRM3-H](#)) is completed and submitted to the Project Management Unit on a project-wide basis with all parcels listed and the environmental document attached. Each parcel will be identified as critical for complex property and/or improvements, large number of displacees, graves, utility relocations, or other complex relocation issues.
 10. Board of Transportation has approved the acquisitions and an appraisal is obtained and negotiations have begun.
- ii. If settlement cannot be achieved, then formal condemnation proceedings may be initiated.
- d. **Other Types of Advance Acquisitions** situations not listed herein may create the need to acquire the property prior to project wide right of way authorization. Such situations may include, but are not limited, to the following: the need to accelerate project construction

and/or project letting dates; obtaining/performing conservation or environmental mitigation; identified high-priority project needs, and situations allowed by Chapter 136 of the North Carolina General Statutes and applicable law.

4. **Guidelines.** The Department's negotiation and property acquisition guidelines and procedures contained within its Right of Way Manual and applicable state and federal law, rules, regulations and guidelines shall apply to all advance acquisitions contemplated by the Department.
5. **Protected Corridors.**
 - a. If an advance acquisition is contemplated for property located within a protected transportation corridor that was adopted by the Department pursuant to N.C.G.S. § 136-44.50 (Transportation Corridor Official Map Act, "Map Act"), then the Map Act's advance acquisition requirements (N.C.G.S. § 136-44.53) must also be met *in addition to* all other applicable guidelines, rules, regulations and laws.
6. **Federal Requirements.**
 - a. If the Department's project includes or anticipates federal participation in any phase of the project, from preliminary engineering, right of way acquisition, to construction, all applicable federal laws and requirements must be complied with as they may relate to all phases of planning, acquisition and construction.
 - b. FHWA will not authorize Protective Purchases and Undue Hardship acquisitions involving parklands or historic properties unless a determination has been completed under 49 U.S.C 1653(f) and Section 4(f) and applicable procedures have been followed.
 - c. Pre-NEPA Document Acquisitions. As stated previously, advance acquisitions performed *prior to* issuance of the NEPA document (e.g., FEIS/ROD or FONSI⁷) are labeled by FHWA as either Protective Purchases or Undue Hardship acquisitions and must comply with 23 C.F.R. § 710.503. FHWA may consider approving Protective Purchases or Undue Hardship acquisitions only after the Department provides official notice to the public that a particular

⁷ Finding Of No Significant Impact Statement ("FONSI").

preferred or recommended location for the project alignment has been selected (i.e., after the Draft Environmental Impact Statement (DEIS) is completed but before the Final EIS is done), or after a public hearing has been held, or an opportunity for such hearing has been afforded regarding the preferred or recommended location.

- d. **Post-NEPA Document Acquisitions.** Acquisition of individual parcels *after* approval by FHWA of the Department's environmental review document are labeled by FHWA as "advance acquisitions" and must comply with 23 C.F.R. § 710.501 and other applicable rules and regulations.

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3.08 DATE OF ACQUISITION

The date of acquisition, also referred to as the date of taking of a parcel of right of way may be established in one of the following three ways:

1. The date that title passes to the Department by the execution, delivery, acceptance, and recordation of a Deed or Easement.
2. The date of the filing of a complaint, a declaration of taking, and the deposit of compensation in court.
3. In the event of failure to record a deed or easement or to file condemnation, a date of taking may be construed as the date on which the Department enters onto and seizes a property by committing some act of construction or exercise of dominion. As a rule this latter situation should occur rarely and only in those instances where the correct property lines or construction limits were not shown on the plans of the project, or where the ownership of a property is not correctly determined.

3.09 RIGHT OF WAY AUTHORIZATIONS

Authorization to proceed with right of way acquisition on State and Federally funded projects will be obtained by the Department's Project Management Unit. No acquisition activities or phases of work shall be undertaken prior to receiving

written authorization from Project Management. Project authorizations will be distributed by the Central Office to all units and offices that will be involved with acquisition activities on specific projects. Categories of authorizations for acquisition activities are listed as follows:

1. Preliminary Engineering - This authorization permits right of way personnel to make preliminary estimates, attend preliminary plan field inspections, check existing rights of way, verify property lines, prepare relocation studies, submit suggested plan changes and corrections, and utilities. Appraisal work may be accomplished under this authorization.
2. Partial Right of Way Authorization - This authorization, usually referred to as Phase 1, permits right of way personnel to proceed with all pre-negotiating activities up to and including the appraising of property.
3. Full Right of Way Authorization - This authorization permits right of way personnel to perform all right of way activities necessary to complete right of way acquisition.

3.10 ADHERENCE TO RIGHT OF WAY ACQUISITION SCHEDULES

Immediately following the receipt of both the final right of way plans and the right of way authorization, the Division Right of Way Agent, Area Negotiator, and Area Appraiser will confer and prepare and distribute a schedule ([FRM3-B](#)) for the accomplishment of right of way activities. The controlling date in the schedule will be the date on which the project has been scheduled by the Project Management Unit for letting to contract. The schedule sets out a time line of completion dates for the various phases of the acquisition processes to be accomplished, such as completion of appraisals, completion of negotiations on utility parcels and improved properties, relocation schedules, etc. In establishing these project schedules, care must be exercised in establishing acquisition activity dates that can realistically be met. Every effort by all personnel associated with acquisition of a project should be exerted to insure completion of all acquisition activities by the scheduled completion date. If it becomes evident, or even suspected, that a project schedule cannot be met, or if unforeseen contingencies arise that would delay a letting, the State Negotiator's Office should be notified in writing promptly so that the schedule may be revised or other arrangements made to complete the project as originally scheduled. The schedule should be sent to Assistant State Negotiator and the State Negotiator.

3.11 RIGHT OF WAY CERTIFICATIONS

Projects lettings are handled by several units within DOT. For traditional projects (most TIP projects), before the project can be let to contract, the status of acquisition must be certified to the Project Management Unit of DOT that right of way is or will be available. Two months prior to the let date, the Division Right of Way Agent will submit a Right of Way Field Certification ([FRM3-C](#)) to the State Negotiator's Office (with copy to Area Negotiator and Assistant State Negotiator) on each project which is scheduled to be let (the Division R/W Agent may use the tentative let list). In this certification, the Division Agent will advise whether all rights of way have been or will be acquired and cleared of displacees prior to the advertising date for the letting (check box #1). If all rights of way have not been acquired (condemned, closed, or entry agreement) and cleared of displacees, the Division Agent will check box #2 and indicate why the rights of way are not available or cleared and what actions have or can be taken to insure that the project can be let as scheduled. If the right of way cannot be acquired and cleared to permit the letting of the project, delaying the project to a later date may be considered or a delay or entry on that specific parcel may be placed in the contract.

For Division projects, the Division R/W Agent should provide the r/w certification to the Division Project Manager or Division Engineer (with copy to Area Negotiator and Assistant State Negotiator).

On state-funded projects, the State Negotiator's Office will certify project right of way and utility status to the Project Management Unit at the one-month review meeting.

On all Federal-Aid projects, including all non-National Highway System (NHS) Federal-Aid (FA) projects that are exempt from FHWA Oversight (as defined in the [NCDOT-FHWA Oversight Agreement](#)), the State Negotiator's Office will provide a Right of Way and Utility Certification form ([FRM3-D](#)) to the Project Management Unit indicating the status of acquisition and right of way clearances for review and approval prior to the advertisement of bids for the project. On all NHS oversight projects - step-by step (as defined in the NCDOT-FHWA Oversight Agreement) with FHWA oversight in construction, the Project Management Unit will provide a Right of Way and Utility Certification form to FHWA indicating the status of acquisition and right of way clearances. The Project Management Unit will request the required project certifications immediately following the one-month review meeting.

The [NCDOT-FHWA Oversight Agreement](#), and accompanying memorandum, is [FRM3-E](#).

3.12 ACQUISITION REPORTS

The Division R/W Agent will maintain a project status report (also known as a report B) on the S (groups) drive under the division, tip number for the project.

3.13 REVIEW BOARDS

The Right of Way Review Board and the Secretary of Transportation's Review Board have been established to examine and recommend potential high-dollar settlements and complex claims which pose high risk.

The Right of Way Review Board is composed of the Chief Engineer and/or delegate(s), the head of the Attorney General's Office-Transportation Section or delegate, the Manager and Assistant Manager of Right of Way, the State Negotiator, the State Appraiser, the Director of Field Support, the Director of Pre-Construction and the FHWA Division Realty Officer (ex-officio member). This Board meets on an as needed basis

The following claims should be presented to the R/W review Board:

2. Complex claims that present high risk
3. Unsettled claims where the proposed settlement is 40% above the approved appraisal of \$500,000 or more
4. Unsettled claims where the settlements will exceed 1 million dollars
5. Condemned claims where the expected settlement is 40% above the approved appraisal of \$500,000 or more
6. Condemned claims where the expected settlement is over 1 million dollars

When it is necessary for the Review Board to consider a settlement, the presenter, usually the Assistant State Negotiator, Area Negotiator, Division R/W Agent, or AG Attorney, will prepare a summary of the claim details and email them to the Administrative Assistant for the R/W Unit Manager, who will send the summary to the members and place the item on the meeting agenda. The members will review the information prior to the Board meeting. The presenter will attend the Board meeting and explain the claim details. Meetings are typically held twice per month and on an as needed basis.

The summary and presentations should include: the effect of the right of way and

construction on the subject property, the Department's appraisal position, appraised values and elements of damages, contentions of the property owners as to damages to their property, the values and damages reflected in the property owner's appraisals, recent court experience in the area of the project and on similar properties, anticipated attitudes of juries, the anticipated cost of trial, unusual circumstances or situations that may enhance the property owners' position in a trial, the risk of receiving an exorbitant verdict from a jury and other factors which may have a direct bearing on the outcome of the condemnation case.

After each case is reviewed, a recommendation and/or approval will be made by the Review Board setting forth an amount that would be justifiable and appropriate to settle the case on an administrative basis prior to its exposure in a trial.

The Secretary of Transportation's Review Board is comprised of the Secretary of Transportation, the Chief Engineer, the Manager of Right of Way, and the head of the Attorney General's Office-Transportation Section. Upon referral from the Right of Way Review Board, this board will review and approve any settlements on claims having a value above one million dollars.

Chapter 4 PROCEDURES PRELIMINARY TO APPRAISAL

4.01 EARLY PROJECT DEVELOPMENT

All Federal-aid highway projects must meet the requirements of Title 23, United States Code (U.S.C.) and the Federal Highway Administration must review and approve selected State actions on Federal-aid projects. This includes actions related to transportation planning; preliminary engineering; engineering; environmental evaluations; public hearings; relocation assistance; right of way acquisition; plans, specifications, and estimates (PS&E); contract awards; construction; and final inspection.

Through its Transportation Improvement Program (TIP), the Department of Transportation identifies and programs its needs for highways or road improvements. Proposed projects which may be subject to Federal-aid funding are reviewed and approved by the Federal Highway Administration (FHWA) prior to projects being authorized. Early project development is that stage following the inception of the project when much of the preliminary planning is accomplished. An environmental assessment is required on each project by the National Environmental Policies Act (NEPA). During the planning phase and NEPA process, the Right of Way Branch will provide right of way estimates and other studies regarding acquisition costs and relocation impacts. In addition, Right of Way personnel will be involved in the public meeting and hearing phase of the project. Public hearings, workshops and other public meetings provide a forum for citizens to have input in the planning process. Citizens may also be informed of the project and its potential impacts. The Division Right of Way Agent shall insure that Right of Way personnel are available at these hearings to discuss general project impacts, acquisition and relocation procedures, and regulations. Right of way acquisition is governed by and must be in compliance with the provisions of the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, Public Law 91-646](#), and subsequent revisions.

Frequently, in the early development of plans, the Division Right of Way Office will be called upon to furnish a right of way abstract for the length of the entire project. In many cases it will be acceptable to furnish a point-to-point abstract covering numerous parcels in those instances where the existing right of way is the same. Existing R/W Abstracts are discussed in detail in Section 4.03 below.

4.02 FIELD PLAN INSPECTION

The Roadway Design Unit distributes copies of the preliminary right of way plans to all necessary Units including the Right of Way Unit for the purpose of holding an "on-the-ground inspection" of the plans and the project. The purpose of this preliminary inspection is to thoroughly review the plans with all Units involved, to insure that the plans agree with conditions found on the project, and to recommend any changes in grade, alignment, drainage, access, driveways, utilities, existing right of way limits, or proposed right of way and easements as may be appropriate to improve the design of the project.

On all traditional projects (not Design Build), the Field Inspection procedure is as follows:

Prior to the Field Inspection meeting, the Division Right of Way Agent will set up a meeting with the R/W Agents assigned to the project, the Area Appraiser, representatives from the Utility Section, and the Area Negotiator to review the project plans in the field and discuss all matters affecting right of way acquisition, coordination of the various acquisition activities and clearance of the right of way to insure a timely letting of that project.

On those projects where service road studies may be involved and have not been secured, it is imperative that the Area Appraiser initiate a Service Road Study Report promptly by the Appraisal Unit to estimate damages to isolated remaining properties and the costs of rights of way for providing service roads to isolated properties so the Design Unit can determine if the construction of service roads are economically feasible and should be incorporated into the project plans.

In certain instances, changes in grade or alignment may affect access to existing business properties and may cause damages in excess of grading costs involved. Minor changes in the grade or alignment can sometimes be made that will save in the overall cost of the project or will result in good will on the part of the Department toward the property owner without sacrificing good design. The time to make such changes is during or as soon as possible after the Field Plan Inspection and before the plans are completed. This will save time in the preparation of plans and will eliminate delays to contractors in making changes after construction of the project is under way. Remember that it takes time and it cost money to make revisions during the acquisition phase, so it is very important that this Field Plan Inspection be given careful study and consideration.

Two sets of preliminary plans will be sent to the Division Right of Way Agent to be used in showing any recommended changes or corrections resulting from the Field Inspection.

On the day of the meeting, the Division R/W Agent and other selected r/w personnel will attend the meeting and state their recommendations. There are typically many people at this meeting, and many revisions are discussed by all. The Division R/W Agent must be ready to consider and discuss potential revisions brought up by other units. He/she must quickly consider the r/w effects of such revisions and state the potential impacts to the r/w of such changes.

Due to the importance of acquiring parcels needed for utility relocation early in the schedule, it is critical that the Utility Unit is represented at the Field Meeting, and that the utility parcels have been identified. The Division R/W Agent should notify the Assistant State Negotiator if either of these does not occur.

Following the meeting, the Division Construction Engineer typically prepares a memo to the Design Engineer documenting the requested revisions. The Divisions across the state may prefer various ways of documenting r/w revisions/suggestions. The preferred method is for the Division R/W Agent to submit a written list to the Division Construction Engineer for incorporation with his/her memo. Alternately, the Division R/W Agent may send his/her proposed revisions to the Assistant State Negotiator, who will review and forward them to the Design Unit. A third possible way is for the Design Engineer to note the revisions during the meeting.

4.03 CONFIRMATION OF EXISTING RIGHTS OF WAY

On all projects, the existing right of way widths along the entire project must be confirmed. This is one of the most important steps in the right of way phase. If the existing right of way is incorrect, then the Department is not accurately compensating the affected property owners.

For many years the statutes of this state permitted the Department of Transportation to enter onto private property for the purpose of constructing roads without payment of compensation or even without notice to the property owner, leaving it to the property owner to file an action for the recovery of damages in the event that the owner considered the property damaged. The statutes further provided that in the event the property owner did not initiate an action for the recovery of damages within a specified time after completion of the project, the owner was then barred from recovery.

Therefore, the Department seldom made attempts to secure written right of way agreements. Even after the Department began securing signed agreements, it recorded few of them until the 1960's. In addition, in the 1940's the Department, then the State Highway Commission, took over many roads from the Counties,

with any documentation as to the existing right of way width of those roads..

The existing right of way width should be the width that the Department can prove, if put in a position of having to defend its claim in court. The Division Right of Way Agent should fully document the existing right of way on each property along the project.

The Right of Way Agents should search the following for evidence of the existing right of way:

1. recorded deeds and plats
2. recorded and unrecorded r/w agreements
3. old highway plans
4. intersecting and adjoining project files and plans
5. maintenance limits including ditches, back slopes or any area that has been mowed or otherwise maintained
6. other on the ground evidences such as property irons or corners and r/w monuments
7. files in the Raleigh R/W office
8. files in the Division Office, including encroachment agreements and driveway permits

The Raleigh R/W Office will furnish to the Division R/W Agents, upon their request, any evidence it can locate as to these right of way widths. This typically consists of r/w agreements, or copies of the plans of earlier projects. The Division Right of Way Agent will be expected to check the Division file as some agreements may have been misfiled in the Raleigh Office that can be found in the Division. Furthermore, in some instances, agreements may have been secured by the Division which were not transmitted to the Raleigh R/W Office. A search should be made for any old agreements, forms, or any petitions signed by property owners requesting that road improvements be made which may have been secured by Division personnel but were not forwarded to the Central Office.

A check should be made of other projects intersecting the project in question as sight distance areas may have been secured by agreement on these other intersecting roads.

After a thorough search, the Agent should complete [FRM4-A](#) (Existing Right of Way Abstract) for each parcel. The Agent will provide this form to the Division

R/W Agent for approval. **Again, it is imperative that the Agent and the Division R/W Agent confirm the existing right of way before making any appraisal request or right of way claim reports.** The existing right of way should be the greatest width that the Department can prove, if called upon in court. It will never be less than the width the Department has been maintaining or otherwise exercising dominion over.

Correct existing right of way widths should be shown on the plans when they are issued for right of way acquisition. If this is not the case, the Division R/W Agent should provide correct abstract information to the Locating Engineer, and then submit revisions through the Assistant State Negotiator.

4.04 DESIGNATION OF PARCEL NUMBERS

Each parcel where right of way is to be acquired will be given a number by the Design Branch. The numbering of parcels will begin at the beginning of the project with 001 and will be carried through continuously to the end of the project. Approved Advance acquisitions will retain the parcel number previously assigned.

Please note that while the plans may indicate a 1 or 3 digit parcel number, the right of way branch will use an expanded parcel numbering system on all of its forms, instruments and computer systems shown as follows:

TIP Projects

B-3702 002

RS2475 001

R-2539B 086

R-2247EA 803

R-2100A 210B

R-2101AB 047Z

Secondary Roads & Division Projects

005SR1182 001 (the 005 is the county code, 005 here is Ashe County)

044SR1509 002

033NC008 005

005=County, SR 1182 is the road, 001 is the parcel

Moving Ahead Projects

MA06030R 001

MA=Moving Ahead, 06=Division, 030=County, R or B=Roadway or bridge

If a parcel is eliminated, that parcel should not be used again. Generally the controlling factor in the numbering of right of way parcels is the ownership of the property; however, there are other factors that enter into the identity of the various parcels of land, these being reflected by the highest and best use, and unity of use of the property. Frequently, a number of contiguous lots owned by one party may be shown under one parcel number.

If, in the study of these properties, the Agent finds that these lots do not have a unity of use and commonality of ownership, then the Agent should break down the master parcel into separate parcels according to its use in order that separate values might be assigned to each. If the Agent determines that two or smaller parcels or lots can be combined to form one unit consistent with the highest and best use and ownership, then only one number should be assigned to the unit. If it is discovered that a large rural tract was purchased in several parcels, this does not necessarily mean that more than one parcel number should be given to the tract. Again the question of unity of use should be taken into consideration in determining whether any of the separate tracts enclosed within the overall tract should be given separate parcel numbers or whether the entire tract should be treated as one parcel. **The Area Appraiser should be consulted when determining whether lot/tracts under the same ownership should be combined or separated for appraisal purposes.**

If it is determined to divide a parcel or combine two or more parcels, then the original number should remain intact and not be used again without modification. For example, if it should become necessary to divide Parcel R-2633B 002 into three parcels, the number 2 would remain as the designation of one of the parcels and the other two parcels should be numbered R-2633B 002A and R-2633B 002B. Likewise, if it should become necessary to combine Parcels R-2633B 003 and R-2633B 004, then number R-2633B 004 should be eliminated showing both properties combined as being number 003. The number that is discarded should not be used again in numbering another parcel. When plans are revised due to second takings from properties where original claim has been closed, the designation "Z" will immediately follow the original parcel number. (For example: Parcel R-2633B 056Z. Second takings will be discussed later in this chapter.

4.05 DISTRIBUTION & REVIEW OF PLANS

Once the Design Unit has made the revisions obtained from the Field Inspection meeting, the Design Unit will notify the Right of Way Unit that the final right of way plans are available on the project store. The project store is the server that the Design Unit uses to contain the PDF version of current and past plans. Once the Raleigh R/W Office advises the various R/W personnel that the plans are available, those personnel should locate and download the pdf plans and

begin their assigned work. For a limited time, the Design Unit will continue to distribute six sets of full size plans on Urban and Rural projects to the R/W Unit. Three sets are sent to the Division Right of Way Agent, two sets to the Area Appraiser, and one set is retained by the Checking Section of the Administrative Unit. If the Division Right of Way Agent needs additional sets, they must make their request through the Assistant State Negotiator. At this time, the R/W Cadd Unit will begin the work of creating cadd generated descriptions and diagrams for each parcel. Also, the Raleigh R/W Unit will request that the Location & Surveys Unit stake the right of way. In some instances the Division R/W Agent can arrange for minor staking through the Division Engineer. It may be beneficial for the Division R/W Agent to discuss the staking schedule with the Locating Engineer for his/her division. It may be necessary to establish priority parcels for staking.

Following receipt of the plans and authorization,

1. The Area Negotiator, the Division R/W Agent, the Project Agent(s), and the Area Appraiser will meet to discuss the project schedule, the parcels requiring title opinions, the parcels where a claim report may be used, and any other factors which may influence the acquisition. In addition, they will create a priority list for the parcels with highest priority parcels being those needed for utility purposes and those where houses, businesses, or other improvements are within the proposed r/w.
2. The Division R/W Agent should make a list of all parcels shown on the plans with the corresponding owner's names. This list should be emailed to the Raleigh R/W Office - Administrative Unit so that the Parcels may be entered into the Department's fiscal system known as "SAP". This must be done so that prompt payments can be made on that parcel (such as payments for appraisals, titles and closings, and payments to property owners).
3. The Division R/W Office will set up project files on the s drive (and if applicable on the division's share drive) in accordance with file naming guidelines set out by the Right of Way Unit.
4. OPTIONAL: As the Department moves to a paperless process, this step may be eliminated. A paper file folder may be prepared for each individual parcel. On the identification tab of the folder should appear the TIP/Parcel number, wbs, county, and owner's name. Folders should be carried with the Agent on all contacts made with the property owner. Appropriate forms may be added to each folder. The folder may be recycled or reused upon completion of the acquisition, provided all necessary documents are saved on the S (groups) drive. The paper folders should be kept in the Division R/W Office until the claim is closed or if condemned, the judgment is recorded, and all necessary info is placed on the s (groups) drive. The original recorded instruments should be kept indefinitely.

5. A project status report will be made and saved as Gencor-report b TIP # on the s drive under the project tip number (Example: Gencor-Report B R-2633B)

4.06 STATEMENTS OF NEGOTIATOR

Upon assignment of a project and prior to any contact with property owners regarding acquisition, the Negotiating Agent will sign the portion of the [FRM4-C](#), that states the following:

The undersigned hereby acknowledge that he/she has no direct or indirect, past, present, or contemplated future personal interest in the parcel or in any benefit from the acquisition of such property.

When negotiations are successful, the successful Agent will sign the portion of the [FRM4-C](#) that states:

The undersigned hereby acknowledges that the written instruments secured by the undersigned on the above parcel embodies all the considerations agreed upon between the negotiator and the property owner; and the instruments were obtained without coercion, promises other than those shown in the instruments, or threats of any kind whatsoever by either party.

This procedure is also discussed in Chapter 12.

Note: In some cases, the RW Unit may process payments for items where a traditional negotiating diary is not needed. In these cases, a signed affidavit is still required. The Agent may use [FRM4-BB](#) in these cases.

4.07 VERIFICATION OF AREAS AND PREPARATION OF CADD INFORMATION

The agent will then take the cadd diagrams and descriptions for each parcel and compare them to the project plans. Any discrepancies should be resolved with the RW Cadd unit. On large projects, it may take some time to receive the cadd descriptions and diagram and it may be helpful to provide a priority list to the RW Cadd Unit. The highest priority parcels will be any parcels needed for utility

relocations and parcels where structures are within the right of way. If the cadd information is not yet available the agent should proceed to the next step below.

4.08 FIELD INSPECTION & EXAMINATION OF EACH INDIVIDUAL PARCEL

Prior to the first contact with the property owner, the Agent should study each parcel on the plans, taking note of the existing and proposed design and conditions. The Agents should note the location and size of the proposed pavement, whether or not curb and gutter or storm drainage is provided, the slope ratio for cuts and fills, existing and proposed access and driveways, and other pertinent information as to the construction of the project so that they will be in a position to clearly explain the plans to property owners and other interested parties. It is often helpful to the agent to use colored pencils to distinguish certain items on the plans such as existing and proposed r/w, easements, property lines, structures, etc. The agent should also make an on-the-ground inspection of each individual parcel to become familiar with the property. On this inspection the Agent should make record observations as to the physical evidences of existing right of way and should check property corners and property lines. The Agent is to note any peculiar features of terrain that might be affected by the project, look for evidence of public utilities such as water, sewer, gas mains, and other utilities which may be above ground such as power or telephone lines, and note any residences, businesses and other structures where relocatees may be involved. If the property owner is on site, and approaches the Agent, the agent may either proceed with the initial contact with the property owner as outlined below, or he/she may set an appointment to come back and make the initial contact at an appropriate time.

4.09 NOTICE OF ABANDONMENT

The design of a project may require the tie-in and relocation of intersecting streets and Y-lines with the main survey line of the project at different or at new locations. These changes may render some streets and roads along with their rights of ways useless beyond the project construction limits. In these cases, street or road rights of way may no longer be needed and can be removed from the State Maintenance System. The act of removing a road from the State Maintenance System is called abandonment. Abandonment from the System does not necessarily mean that title to the underlying land reverts to the previous landowners. The underlying land may have been a public street and would

remain a public street or public access after abandonment. The Department only has the authority to remove or abandon a street or road from the State Maintenance System. Section [136-55.1](#) of the General Statutes specifies the procedure for abandonment that is outlined as follows:

- (a) *At least 60 days prior to any action by the Department of Transportation abandoning a segment of road and removing the same from the State highway system for maintenance, except roads abandoned on request of the county commissioners under G.S. 136-63, the Department of Transportation shall notify by registered mail or personal delivery all owners of property adjoining the section of road to be abandoned whose whereabouts can be ascertained by due diligence. Said notice shall describe the section of road which is proposed to be abandoned and shall give the date, place, and time of the Department of Transportation meeting at which the action abandoning said section of road is to be taken.*
- (b) *In keeping with its overall zoning scheme and long-range plans regarding the extraterritorial jurisdiction area, a municipality may keep open and assume responsibility for maintenance of a road within one mile of its corporate limits once it is abandoned from the State highway system.*

[G.S. 136-55.1](#), applies only to those abandonments on projects on which plans are approved by the Department of Transportation for letting to contract. Projects would principally apply to roads on the primary highway system, those numbered highways with a US or NC prefixes, with some intersecting secondary system roads which would carry an SR designation.

When rights of ways on a project are shown on the plans to be abandoned, the Agent will notify affected owners in writing by registered mail or hand delivery, the date of the Department of Transportation meeting at which time the abandonment of the section of road will be considered. The meeting will follow the opening of bids for construction of the subject project, also known as the letting date of the project. The Agent is to secure from the Raleigh Office the date of the Department of Transportation meeting prior to writing the letter to the owners. The Agent should attach a cutout of the plans to the owners' letter to identify the section of road to be abandoned. The actual abandonment of right of way on a project that is let to contract actually occurs when the project is completed and accepted by the Department.

Abandonment of rights of way from the secondary highway system would be subject to Section [136-63](#) of the General Statutes. The Right of Way Agent should be careful to explain that the right of way will remain intact until action is requested by owners through the County Commissioners, and/or Municipality, to complete the abandonment. This notification should contain a statement to the

effect that if the property owners plan to attend the Department of Transportation meeting that they notify the Right of Way Agent some three weeks prior to said meeting. The Right of Way Agent, in turn, will then notify the Raleigh Office.

4.10 RIGHT OF WAY CLAIMS OF \$25,000 OR LESS

An experienced Agent can prepare a Right of Way Claim Report ([FRM4-N](#)), on a parcel if the value of the areas is determined to be \$25,000 or less and there are no damages to the remaining property. This procedure will comply with the waiver of appraisal procedure outlined in [49CFR Part 24 Subpart B, Section 24.102](#) of the Code of Federal Regulations. As stated above, the Area Appraiser will assist with determining which parcels are likely to be candidates for the R/W Claim Report.

On claims where the valuation is \$10,000 or less, the Agent who prepares the [FRM4-N](#) may negotiate the claim directly with the property owner.

On those claims exceeding the \$10,000 threshold, up to a maximum of \$25,000, the [FRM4-N](#) must be prepared by an Agent other than the Agent who will be negotiating the claim to eliminate possibility of any conflict of interest. The Agent negotiating the claim shall offer the property owner the option of having an appraisal prepared on the property and if the property owner elects to have an appraisal made, then, one must be prepared. If the property owner elects to negotiate on the basis of a [FRM4-N](#), the negotiating Agent shall proceed accordingly. Question 11 on the [FRM4-C](#) should be checked.

The Right of Way Claim Report, [FRM4-N](#), shall be reviewed and approved by a supervisor (must be an employee with NCDOT). It is permissible for R/W Agents or Consultants to prepare the [FRM4-N](#). However, a NCDOT Employee-Supervisor (Division R/W Agent, Senior R/W Agent, or higher level supervisor) must approve and sign the [FRM4-N](#). This is consistent with the FHWA requirement that the agency set the just compensation amount.

Settlements, whether the offer is based on a [FRM4-N](#) or an appraisal, will be made in accordance with provisions in Chapter 10 of this Manual. If a settlement based on a [FRM4-N](#) cannot be reached, the Agent will request an appraisal on that claim from the Appraisal Unit in accordance with Chapter 5 of this Manual. If an appraisal is requested, a copy of the [FRM4-N](#) will be placed in the parcel requests folder on the s (groups) drive.

4.11 NEGOTIATING DIARY

The agents will maintain accurate, written records of all contacts with the owner, including those which involve relocation assistance. The agent should record, on a parcel-by-parcel basis, all contacts immediately after each contact with a property owner, including telephone calls, email and written correspondence:

the date, place and method of contact; persons present, if applicable; offers made, counter-offers, reasons settlement not be reached; remarks by owners, remarks by agents, and any other pertinent data. [FRM4-C](#) has been established for maintaining the Negotiating Diary. This form should be maintained in the final report folder on the s (groups) drive. [FRM4-C](#) is to be completed after the initial contact and all subsequent contacts. Each date of contact should have a hand-written signature or electronic signature by it.

On those claims involving relocatees, [FRM15-M](#) (Relocation Diary) shall be maintained on each relocatee.

4.12 INITIAL CONTACT WITH PROPERTY OWNERS

The preliminary or first contact with the property owner can be the most important part of the negotiation process. All initial contacts are to be made in person, provided the property owner is located in the state of North Carolina and is willing to meet with the Right of Way Agent. The Agent should be well prepared and punctual. An onsite meeting is preferred. At this first meeting, the Agent should maintain a calm demeanor, be prepared to answer questions, and be courteous. If the agent cannot answer a question posed by the owner, he/she should not guess, but seek out answers from appropriate Department personnel and relay those answers back promptly to the owner.

A. An Explanation of the Necessity for the Project and Its Nature

The Right of Way Agent should carefully explain to the property owner the necessity for the project and how it fits into the overall highway system. The Agent should call attention to the continuing increase in vehicular transportation on the highway system. By the study of the community, the Agent may be able to point out specific advantages to the property by making it more accessible to school, church, or market areas. The property owner may be unfamiliar with rights of way that involve control of access, therefore, the Agent should explain to the owner why it is necessary to impose access control and what the advantages are in developing this type of highway.

B. An Explanation of How the Property Will Be Affected

On the plans and on the ground, the Right of Way Agent will carefully point out to the property owners the features of the project as they affect the owner's property and will provide copies of the plans sheets to the property owners, including the cross sections. The Agent is cautioned to consult the cross sections in explaining grade changes and not rely solely on the center line profile. What may appear to be a two foot cut on the highway centerline may be a 10 foot fill between the shoulder break point and the slope stake line. The Agent should point out any changes in grade and related affects to access to the remaining property. The Agent will also, to the best of his ability, explain the effects of the project on a water supply, septic system, drainage, any benefits or adverse effects that the project might have on the use of the property. Any buildings, trees, shrubbery, fences or any other improvements that might be located within the right of way should be pointed out to the property owner. The Agent should explain the effects of the project in complete frankness and not attempt to hide or gloss over any undesirable features of the project. It is more desirable to discuss these matters fully prior to the time the appraisal is made rather than after the offer of compensation has been made.

C. Advising The Owner Of The Acquisition Procedure

The Agent will carefully point out to the property owner just how the Department of Transportation will proceed with the acquisition of their property. The Agent should stress that the Department intends to see that each property owner receives just compensation for all damages sustained from the construction of the project. The Agent should explain that the Department secures an appraisal, or evaluation if a Right of Way Claim Report is appropriate, on every parcel and that the owner is offered the full amount of the approved appraisal rather than for the Department to attempt to purchase the property in an amount less than or higher than the appraised damages. The Agent should also point out to the property owner, that in a few instances, it may be impossible to reach an agreement for the acquisition due to an honest difference of opinion between the Department of Transportation and the property owner; therefore, it would be necessary for the Department to acquire the property through the power of eminent domain or condemnation. This should be done in such a manner that the property owner does not gain the impression that condemnation is a threat to hasten settlement. In no instance should the Agent suggest to the owner that they sign an agreement in order to save attorney fees, court cost, etc., or trade on his reluctance to undergo an experience in court. If a dwelling, business, or other personal property is located with the proposed right of way for the project, the Agent shall explain the Relocation Assistance program and the eligibility to receive relocation benefits to the owner.

On the initial contact, the Agent will present the property owner with a Legal Rights Brochure [FRM4-G](#), [Title VI Brochure FRM4-GG](#). These items explain the legal rights of the owner and provide an overview of the acquisition process. These materials should be included, if the agent must conduct the initial contact by mail. Follow-up telephone calls to out-of-town and out-of-state owners to further explain the project and answer questions are encouraged.

D. If relocatees are involved in the claim, the Agent will conduct a relocation initial contact and explain Relocation Assistance Program as outlined in Chapter 15.

E. Solicitation of Owner's Cooperation with Appraisers

If an appraisal is needed, the Agent should inform the property owner that it is his/her right to accompany the appraiser on the inspection of their property. And encourage the owner to take the time meet the appraiser and to point out to the appraiser all elements that they think may cause damage to their property as a result of the project. The Agent should also suggest to the property owner that they call to the attention of the appraiser any sales of property in the area they are aware of that may be comparable to their property. The Agent should advise the owners that an appraiser will contact them at a later date for an inspection of their property.

F. Donations of Right of Way

Donations of rights of way or easements on projects are permitted by Department of Transportation and FHWA regulations and are encouraged where practical. Donations of all or any part of a claimant's property needed because of a project may be accepted by the Right of Way Branch provided the owner has been fully informed of his legal rights to receive "just compensation" for such property. These rights are as follows:

- (1) an opportunity to accompany the appraiser who will appraise their property;
- (2) receive a written statement or summary of the offer representing just compensation as established by the acquiring agency;
- (3) 90-day notice to vacate if displacees are involved.

The environmental document for the project should be completed and a record of decision reached by FHWA prior to acceptance of donated rights of

way. **On Federal Aid projects, an appraisal or valuation of the property being donated will be secured in order for the Department to receive credit from FHWA towards the prorated share of the project costs being borne by the Department.** In addition, any environmental concerns, such as underground contamination, should be investigated and mitigated prior to acceptance of donated right of way or easements.

Donations should be solicited on the initial contact. When accepting a donation of right of way or easements from a willing property owner, the Agent will advise the owner of the following:

"The property owner is entitled to have an appraisal made on his/her property to determine just compensation and by donating, the owner releases the Department from this obligation and waives any compensation in exchange for the donation of property as right of way in full settlement of his/her claim"

And have the owner sign [FRM4-CC](#). This agent should also check the box for Item No. 12 of the [FRM4-C](#). If there is no donation, this box will not be checked.

From time to time, the Department may encounter public-private projects involving private parties and/or landowners who have entered into an agreement with the Department to donate rights of way in exchange for construction or other concessions. On these type projects, the Division Agents should review the parcels involved and satisfactorily determine or verify the ownership of the rights of way being donated to the Department prior to acceptance of the donation. If a substantial donation is involved, a title abstract or preliminary certificate of title would be advisable to ascertain the ownership of the property. If there is not sufficient time to secure a certificate of title, the Division Agent should insure that a title search is made at the courthouse to verify ownership and the existence of any encumbrances against the property. Another item to be considered prior to the acceptance of a donation is the existence or possibility of underground tanks or hazardous materials being within the donated right of way. An investigation of any suspected environmental hazardous conditions may prevent the Department from unsuspectingly acquiring unnecessary liabilities along with the right of way.

G. Preparation of [FRM4-H](#)

[FRM4-H](#) is a history of the property that is completed by obtaining information from the owner and from public records. This form should be completed and placed in the parcel requests folder on the s (groups) drive. This information is obtained through direct conversation with the owner and the Agent should

point out to the owner that this information is necessary in the event a Certificate of Title on the property is required. The Agent is responsible for verifying or obtaining correct recordation and other information regarding the owner's record title from public records. The Agent should be very careful in obtaining the recordation data, book and page number, since a wrong reference can very easily confuse the abstracting attorney or the appraiser.

NOTE: All blanks on [FRM4-H](#) are to be filled in. If inappropriate information is requested, fill in blank with N/A. See Chapter 6 for further information regarding Title Investigations.

H. Partial Taking of Buildings and or Structures

It is quite common on projects, for the r/w or easement line to pass partially through a structure, leaving part of the structure outside of the land areas to be acquired. In these situations, the Department must determine if the entire structure should be acquired or if the structure should be cut off at the r/w or easement line. The General Statutes of North Carolina permit the acquisition of that portion of a building or structure lying outside the right of way, a based on an affidavit of an independent real estate appraiser (see Chapter 5 of this Manual) that the partial taking of the structure will substantially destroy the economic value or utility of the structure ([FRM5-Q](#)). Other considerations are that an economy in the expenditure of public funds will be promoted as a result; or that it is not feasible to cut off a portion of the building without destroying the entire building; or that the convenience, safety, or improvement of the highway will be promoted as a result.

Note that nothing in the statute gives the Department of Transportation the authority to condemn the underlying fee of the portion of any building or structure which lies outside the right of way of an existing or proposed street or highway. In conjunction with the request for appraisal, the Agent will also submit a copy of the plan sheet showing that a building or structure is being partially acquired and request a partial take determination and affidavit from the Area Appraiser ([FRM5-Q](#)). The Agent will verify the accuracy of the location of the right of way and/or easement line as it affects the building or structure on the plans and will submit a corrected sketch of the building or structure only if shown incorrectly on the plans.

The Agent will, complete [FRM4-J](#) listing those improvements, for which appraisals and affidavits have been received indicating that the economic value of the improvement is being destroyed by the partial acquisition. The [FRM4-J](#) and the scanned affidavit should be placed into the project folder on the s (groups) drive.

At its meeting in December, 2011, the Board of Transportation passed the following resolution:

It is hereby ordained that the approval of preliminary right of way plans by the Board shall include the approval of the acquisition, in their entirety, of any buildings or structures partially located within the right of way, along with the right to enter upon the surrounding lands for the purpose of removing the buildings or structures; provided the Department secures an affidavit of an independent real estate appraiser that the partial taking will substantially destroy the economic value or utility of the building or structure and (i) that an economy in the expenditure of public funds will be promoted thereby; or (ii) that it is not feasible to cut off a portion of the building without destroying the entire building; or (iii) that the convenience, safety or improvement of the transportation project will be promoted thereby; This action shall also apply retroactively to all projects previously authorized by the Board of Transportation.

It is still necessary for the appraisal section to provide the appraiser's affidavit [FRM5-Q](#) to the R/W agent just as they have done in the past.

It is still necessary for the R/W agent to complete Question #8 on [FRM13-A](#) when submitting a condemnation final report.

I. Questions on [FRM13-A](#)

The purpose of [FRM13-A](#) is to supply information to the Attorney General's Office in the event that it is necessary to file condemnation. Some of the information called for in this form can best be obtained from the property owner during the initial contact. Other information on this form will have to be acquired from other sources, such as the Preliminary Certificate of Title, at a later date. See also **Section 13.02** of this Manual.

J. Inventory of Equipment

When there is a business displace, the Department must determine which items are considered realty and are appraised, and which items are personal property and are moved by the owner.

During the initial contact, the Agent will make an inventory of the equipment located in each business being acquired. The purpose of this inventory to determine the ownership of the equipment and fixtures from the property owner, tenants, lessees or other indicated owners of the equipment and to, ultimately, determine if any equipment identified as a trade fixture is realty or personal property. Upon completion of the inventory, the Agent will complete an Inventory of Equipment form, [FRM4-K](#), for each individual owner of equipment and include it with the Appraisal Request on each parcel. Copies

of any leases (oral, written, recorded, or unrecorded) should be submitted with the Appraisal Request. The final responsibility of determining if the trade fixture items are realty or personal property is assigned to the Area Appraiser.

The Area Appraiser will examine each [FRM4-K](#) and with the assistance of the Attorney General's Office, will mark each item as either Personal property or Realty. The Area Appraiser will advise the appraisers assigned to the parcel of this determination. At the time the Agent makes the offer on a parcel involving trade fixtures or equipment, the Agent will include in the offer letter a list of equipment which has been considered realty, so the owner will have no misunderstanding as to what items are considered realty. Those items considered as personal property may be eligible for relocation benefits.

K. Land Area Data for Farms

In order to make a thorough appraisal on large acreage tracts, the appraiser must know how much of the property is cleared and how much is wooded. On these properties, it will be necessary for the Project Agent to obtain this information on the initial contact with the property owner and also by going to the Farm Services Agency Office (formerly the ASCS Office) in the respective county to secure verification of cleared land and wooded land. The Land Area Data sheet ([FRM4-L](#)) is to be completed by the Agent, on all such properties and included with the Appraisal Request. The Agent should get the property owner or their representative to sign the form to authorize the FSA Office to release information concerning acreages involved. The FSA official should also sign the form after the information has been obtained.

In many cases the Agent will encounter properties containing large acreages which have no farm record in the FSA Office. The Agent should submit the Land Area Data sheet on these properties and break down the cleared and wooded land for the appraiser. In completing the land area breakdown for appraisal purposes, the Agent will show net areas and will not include any existing right of way. In this instance, the Agent will not complete the top portion of the form. The Agent should place the words "NO FARM RECORD" at the top and complete the land area breakdown section for appraisal purposes at the bottom of the form and sign the form. This form will not be necessary for house and lot tracts or other properties not involving large acreages.

L. Federal Taxpayer Identification Form

A Taxpayer Identification Number Form is required when any payment is made by the Department of Transportation. [FRM4-M-ROW](#) should be

completed and signed by whomever the Department warrant (check) is to be made payable. The payee will be the property owners who sign the instruments unless a different payee is specified in the executed instruments. While there may be only one payee per check (husband and wife are considered one payee), there may be multiple checks printed per parcel.

The most common situation is to have one check paid to the owners. However, if there are multiple owners, such as heirs, it will be necessary to spell out in the instrument how the funds are to be paid, and a [FRM4-M-ROW](#) will be signed by each payee. There are other situations where it will be preferred to make the settlement amount payable to the closing attorney. This is true where deeds of trust, taxes or judgments must be paid, where there are out of state owners, or heirs. In these cases a payment clause must be in the instrument and the [FRM4-M-ROW](#) is signed by the closing attorney.

Care must be taken that the [FRM4-M-ROW](#) matches exactly the heading/signature of the instruments and the payee listed in [FRM12-A](#) (unless there is a payment clause in the instruments or in certain cases such as trusts).

The form requires the name and address of the owner or payees, the federal tax id or social security number, the designation of the payee and the signature of the payee. Some sections of the form are noted as optional.

[FRM4-M-ROW](#) may be obtained on the initial contact. When a final report is process the payee's taxpayer id number is entered in the Department's Fiscal Section. The Department will issue 1099s to all payees that are required to receive one. Where checks are paid to Closing Attorneys, the Closing attorney should subsequently issue 1099's to the payees.

4.13 DIVISION DESIGN, SPOT SAFETY, AND STATE-FUNDED

The procedures addressed in this section will apply to acquisition of rights of way for Division Design and Construct (DDC) projects, Division Design and Let (DDL) projects, Spot Safety projects from Traffic Engineering, and State-Funded projects. Most likely, these projects will be entirely State-Funded with no Federal Funds being used on any stage of the project.

The requester, the party responsible for developing the project, may be the Division Engineer, Division Design Engineer, District Engineer, the Traffic Engineering and Safety Systems Branch or one of their regional offices, private engineering firms, or other consulting firms.

A requester will provide the Division Right of Way Agent with a rough design of a proposed improvement project with sufficient detail for verification of existing rights of way and for estimation of costs of rights of way, if required. The rough design should also indicate any utility involvement in the project.

The Division Right of Way Agent will abstract the existing right of way for the project and provide the requesting party with an estimate of the cost of any right of way and/or easements that will need to be acquired in conjunction with the proposed project. The Division is responsible for obtaining utility relocation estimates.

The requester will be responsible for setting up funding with the Project Management Branch for any anticipated or proposed right of way acquisition on a project. It is suggested that a token amount of funding for right of way costs be included in the funding approved by the Board of Transportation for the project. The requester will notify the Division Right of Way Agent of the Board's approval of funding.

At the same time that the requester submits funding requests to the Project Management Branch, he will provide the Division Right of Way Agent with copies of the requests for funding. The Division Right of Way Agent will, in turn, submit these requests to the Raleigh R/W Office for the purpose of requesting approval from the Board of Transportation for acquisition of rights of way through negotiation and/or condemnation. Where possible, obtaining authorization for funding and approval for acquisition at the same Board meeting will help to expedite acquisition and project construction. Upon receiving acquisition approval, the Division Right of Way Agent will schedule project acquisition activities and begin work. Prior to Board of Transportation approval of funding, the requester will provide the Division Right of Way Agent with completed plans for the project. These plans must contain sufficient detail so metes and bounds descriptions of rights of way and/or easement areas can be generated for right of way agreements and/or deeds used in their acquisition. CADD generated plans would be preferred for projects requiring right of way acquisition. Utilities located within the existing and/or proposed rights of way that will be impacted by construction of the project should be identified, as well as other features such as buildings and improvements, signs, septic systems, etc.

The Division Right of Way Agent shall review all projects with the requesters, as may be necessary, to determine if public hearings or meetings, or plans inspections, may be required; to determine if project plans need to be recorded; when plans corrections are necessary; when condemnation is anticipated on parcel(s); when unanticipated situations, such as relocation or complicated utility involvement, changes the scope of the project: etc.

The Division Right of Way Agent is responsible for coordinating all acquisition

activities and procedures on each project as outlined in the Right of Way Manual. Right of Way Claim Reports ([FRM4-N](#)) shall be used to the fullest extent possible. Acquisition of rights of way may be in fee simple or by permanent easement as the project may dictate. When preparing deeds or easement agreements, the provision regarding the recordation of project plans (register of deeds office, on file in Raleigh or plans attached) must be addressed

The Division Offices (not right of way agents) will handle utility conflicts directly with the utility owners/providers and coordinate these conflicts and relocations.

The Division Right of Way Agent, or his designee, will provide regular status reports regarding project and acquisition activities to the requester and to the Raleigh R/W Office. These projects should also be reported on the Monthly Primary Report and Report B.

4.14 APPRAISAL REQUESTS

Upon completion of the initial contact, the Agent should prepare an Appraisal Request/ Summary Sheet, [FRM4-B](#), and place it along with other supporting documents such as [FRM4-H](#), [FRM4-K](#) (Inventory of Equipment), plan revisions, [FRM4-L](#) (Land Area Data Sheet), deeds to the parcel, tax card/printout, cadd diagram, total property sketch, letters to the owner, septic permits, [FRM4-A](#) (R/W Abstract), [FRM4-N](#) (Claim Report), etc. in the parcel requests folder on the s (groups) drive. The Division R/W Agent will then check the documents for accuracy and notify the Area Appraiser that the request is available.

The Agent should state all areas in **acresto3decimalplaces**. All improvements on the property, (those within the r/w, left of the r/w, and right of the r/w) should be listed on the [FRM4-H](#).

4.15 APPRAISAL REQUEST REVISIONS/CORRECTIONS

Occasionally it will be necessary to revise or correct an appraisal request. Revisions are due to a variety of factors such as:

1. Changes made by the owner such as an owner selling or purchasing property after the initial contact or appraisal is made (Revision)
2. R/W or easement revisions (Revision)

3. New information that comes to light (Revision)
4. errors discovered in the original [FRM4-B](#) (Correction)

An incorrect Summary Sheet will cause a delay in the appraisal procedure and accordingly, a loss of valuable negotiating time to the Agent. Every effort should be made to submit accurate and complete appraisal requests.

In the event an error is discovered in the [FRM4-B](#) (Appraisal Summary Sheet), the Area Appraiser should contact the Division R/W Agent, and discuss the discrepancy. The Division R/W Agent will make any needed corrections and resubmit the appraisal request. Every effort should be made by the Division R/W Agent and the Area Appraiser to resolve any errors quickly and efficiently

Likewise, if new information is discovered, the R/W Agent will make any needed revisions and resubmit the appraisal request. When returning a Summary Sheet that has been corrected, the box for "Corrected" should be checked on the [FRM4-B](#). When returning a Summary Sheet that has been revised, the box for "Revised" should be checked on the [FRM4-B](#). The Agent should make the corrections/revisions as soon as possible so there will be no delay in securing the appraisal or appraisals on the property.

The Appraisal Summary Sheet ([FRM4-B](#)) has four columns: "area left of r/w", "area in r/w", "area right of r/w", and "total". Under Land Areas, the Agent should show gross area for each item. Under Land Area in existing highway rights of way, the Agent should show any portion of the property lying within the existing highway rights of way for each item. Under Appraise Net Areas, the Agent will show the net areas to be appraised. Under "Area in Right of Way", the Agent should show only existing right of way that would be involved within the necessary construction areas shown on the plans and show same as Existing Highway Rights of Way under Area in Right of Way.

Multiple properties with an obvious continuity of use under the same ownership will be included on one [FRM4-B](#) and appraised accordingly. Where the Area Appraiser has a doubt as to the continuity of use on multiple parcels of this nature, separate appraisals may be made on the parcels. Contact with the Attorney General's and the Raleigh R/W Office may be appropriate in determining whether parcels should be combined or separated.

4.16 Insignificant & Minor Changes to Appraisals (Red-Line Approach)

There may be instances where plan changes are received after appraisals have been approved and received by the R/W Agent.

If these plan changes result in insignificant or minor area changes and do not increase or decrease the value per acre of the remainders or change proximity damages, the Division Right of Way Agent (or higher level right of way unit supervisor) may adjust the amount of the approved appraisal. This is referred to as a “Red-Line” appraisal adjustment.

For projects worked by staff, the Division Agent should discuss the parcels in question and obtain verbal concurrence from the Area Appraiser before employing this approach. In the same way, the Consultant Project Manager for Consultant or Design Build Projects should discuss with the Review Appraiser the contemplated changes, and obtain concurrence prior to using this approach.

When considering whether to use this approach, the Division Right of Way Agent, Consultant Project Manager, Area Appraiser, and Review Appraiser, are cautioned to consider the cumulative effects of multiple changes to an appraisal.

It is permissible for R/W Agents or Consultants to prepare the Red-Line adjustment. However, a NCDOT Employee-Supervisor (Division R/W Agent, Senior R/W Agent, or higher level supervisor) must approve and sign the Red-Line adjustment. This is consistent with the FHWA requirement that the agency set the just compensation amount.

Procedure for Narrative Appraisals: For a Narrative Appraisal, copy the [FRM5-H](#) from the appraisal and on the copy, in red, line-through any incorrect areas and insert the correct areas; then line through the incorrect after value(s) and difference and insert the corrected after value(s) and difference. The [FRM5-H](#) should be signed and dated at the top by the DOT employee approving the adjustment, **beforearevisedofferismade**. A note should be included at the top of the [FRM5-H](#) that the original appraiser shall be notified of the change and provided a copy of the adjustment. If the allocation of damages to remainder changes, [FRM5-S](#) should be also be adjusted and included. It may be necessary to include and adjust other pages of the appraisal to thoroughly show the changes, especially if the amount of damage to remainder was adjusted.

The adjusted [FRM5-H](#), [FRM5-S](#), and any other revised pages should be scanned all together, named **RedlineAdjustment**, and sent to the Area Appraiser for concurrence. The Area Appraiser will place it on the S (Groups) drive in the Appraisal project/parcel folder. This is necessary so that the Administrative Unit will have access to it when they are reviewing the final report.

Procedure for Right of Way Transmittal Summaries: For a Right of Way Transmittal Summary, copy the [FRM5-K](#) from the appraisal and on the copy, in red, line-through any incorrect areas and insert the correct areas; then line through the incorrect after value(s) and difference and insert the corrected after value(s) and difference. The [FRM5-K](#) should be signed and dated at the top by the DOT employee approving the adjustment **beforea revisedofferismade**.

A note should be included at the top of the [FRM5-K](#) that the original appraiser shall be notified of the change and provided a copy of the adjustment. It may be necessary to include and adjust other pages of the appraisal to thoroughly show the changes, especially if the amount of damage to remainder was adjusted.

The adjusted [FRM5-K](#), and any other revised pages should be scanned all together, named **RedlineAdjustment**, and sent to the Area Appraiser for concurrence. The Area Appraiser will place it on the S (Groups) drive in the Appraisal project/parcel folder. This is necessary so that the Administrative Unit will have access to it when they are reviewing the final report.

These adjusted values become the new approved appraisal amount. If the previous amount was offered to the claimant, a revised offer should be made with the new approved appraisal amount.

If condemnation is necessary, the adjusted amount will be the amount deposited. However, the Area Appraiser should take the area changes into account if an updated or court appraisal is made by their office. For both traditional and consultant acquisitions, the Area Appraiser or Consultant Project Manager should provide original appraiser with a copy of the adjustment, either by email attachment or hard copy.

If an administrative adjustment/condemnation review is needed, the agent should provide both the original appraisal information and the adjusted appraisal information in the appraisal section, showing the adjusted value, with the date adjusted, and the Division R/W Agent (or other DOT Employee-Supervisor) in the Name of Appraiser column, their working title in the staff/fee column, and the word "Red-Line" in the Type column.

4.17 SECOND ACQUISITIONS

In some instances, additional r/w or easements are needed from parcels where the Department has previously acquired r/w or easements on the same project. Numerous factors could cause situations of this nature, such as errors in original planning, increased widths necessary for proper construction, delay of construction of a project after right of way has been purchased, or change of design standards which might necessitate the acquisition of additional widths.

On claims where a negotiated settlement has been reached and the claim is closed, the Agent will treat the second acquisition as a new claim. The original parcel number with the letter Z added will designate the second taking. For example R-2633B 008 would be R-2633B 008z. (The plans will show 008z). In

the event a third acquisition , it would be indicated by the same numerical number followed by the letter Y.

The right of way line or boundary established for the original acquisition will serve as the property line for use in computing the total area of the parcel and the area remaining. The Agent will repeat the acquisition process as indicated in this Manual. Many second acquisitions are minor in nature and the Agent may use a Right of Way Claim report if appropriate.

The Agent should ask the property owner on the initial contact if they have purchased any adjacent land, or if they have sold any land since the original acquisition and inquire and observe if any improvements which may have been added or deleted on the parcel since the time of the original acquisition. If the original acquisition severed a parcel or tract of land and the new acquisition affects the property on both sides of the project, there will be two claims. Claims on which condemnation has been filed and final judgments have been rendered will be handled in the same manner as outlined for claims on which settlement has been made and the claim is closed.

On those claims where condemnation has been filed and judgment has not been rendered, the Agent immediately inform the Trial Attorney of the changes. In most cases, there will not be a second acquisition, but merely a revision of the original claim. See Section 13.18 of the R/W Manual.

If the condemnee has conveyed the remaining area, this would be considered a physical change and would constitute a new claim, new owner and a new parcel number. In unusual situations, the Area Negotiator, Assistant State negotiator, or State Negotiator should be consulted.

Chapter 5 APPRAISAL

5.01 THE UNIFORM ACT AND THE GENERAL STATUTES OF NORTH CAROLINA

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the General Statutes of North Carolina have jurisdiction over and are the source documents for the appraisal requirements set forth in the NCDOT Real Estate Appraisal Standards and Legal Principles.

[The Financial Institution Reform, Recovery and Enforcement Act of 1989 \(FIRREA\)](#) establishes appraisal requirements as set forth in the [Uniform Standards of Professional Appraisal Practice, \(USPAP\)](#). FIRREA has jurisdiction involving any real estate related financial transaction, which involves a federal financial institution's regulatory agency and which require the services of an appraiser.

Many people have mistakenly assumed that the term "federally related transaction" includes NCDOT appraisal work. It does NOT.

Appraisal requirements under USPAP are consistent with, but not identical to the requirements set forth in the NCDOT Uniform Appraisal Standards and Legal Principles. Both documents subscribe to the same basic appraisal fundamentals and have a common goal of a quality appraisal product. However, there are real and perceived differences in the NCDOT requirements and USPAP.

USPAP has a provision in its preamble called the Jurisdictional Exception Rule that recognizes the pre-eminence of law and public policy over specific provisions of USPAP. This provision allows state certified and licensed appraisers to accomplish appraisals for the NCDOT in accordance with the NCDOT Real Estate Appraisal Standards and Legal Principles and not be in jeopardy of being in violation of USPAP.

5.02 PURPOSE OF THE APPRAISAL

The North Carolina Department of Transportation is required by law to reimburse each landowner from whom property is acquired for highway purposes to the extent of the loss, if any, between the fair

market value of the entire property immediately before the taking and the fair market value of the remaining property immediately after the taking. It is the duty of the appraiser to estimate market value to the best of his or her ability in accordance with applicable North Carolina Law and generally accepted appraisal techniques. Appraisals are used to support the Department's request for reimbursement of right of way costs from the Federal Highway Administration and as a basis for negotiations with the property owner.

5.03 CONFIDENTIALITY OF APPRAISALS

Appraisals are a confidential communication between the appraiser and Department of Transportation, Trial Attorneys, or Federal Highway Administration. In no instance shall the appraiser divulge the amount of the appraisal or the breakdown of the appraisal to any person other than the authorized employees of the Department of Transportation or the Federal Highway Administration, without written permission from same, except on proper order of the court or for court testimony. The appraiser is not subject to defend such reports to anyone except Department of Transportation Review Appraisers or in a court of law.

5.04 CONDUCT OF THE APPRAISER

The Right of Way Agent is normally the first representative of the Department of Transportation to contact the property owner with the appraiser making contact shortly thereafter. Under certain circumstances, the Area Appraiser may direct the appraiser to make the first contact, or to accompany the Right of Way Agent on the first contact. The impression made by the first representatives of the Department of Transportation may well dictate the success or failure of subsequent negotiations with the property owner.

5.05 CONTACTS WITH PROPERTY OWNERS

It is a requirement of the Department of Transportation that the appraiser contact the property owner personally unless relieved of this responsibility by the Area Appraiser. The appraiser must be courteous, considerate, and patient with the owner, making every effort to gain his confidence and respect. The appraiser must convey that he or she is competent, well qualified, and fully capable of making a fair and impartial appraisal. During the appraiser's inspection of the property, the owner should be given an opportunity to point out to the appraiser any features of his property or its use that, in his opinion, would have a bearing on its value. The appraiser should make no attempt to answer any questions concerning negotiating procedures or questions of a

technical nature; furthermore, he or she will answer no questions pertaining to the value of any property. If the appraisal process must be discussed, then the appraiser must be extremely careful to make no reference to any dollar amounts. Even the use of hypothetical or theoretical examples may be misinterpreted. The appraiser must never discuss the value of any parcels assigned to him with anyone but Review Appraisers for the Department of Transportation or Federal Highway Administration personnel. Under no circumstances shall the appraiser ask the owner for his opinion of value of all or any portion of his property or his opinion of the damages to his property resulting from the highway taking.

5.06 ABSENTEE PROPERTY OWNERS

The Appraiser is personally responsible for contacting any absentee owners, or their representatives, and for making arrangements for the inspection of the property. Specific information concerning this will be given to the appraiser when he receives the assignment from the Area Appraiser.

5.07 INTERPRETATION OF PLANS

The appraiser is cautioned against interpretation of plans for the property owner. This is primarily a function of the Right of Way Agent. Persistent questioning should be brought to the attention of the agent through the Area Appraiser. The appraiser should not give the impression that he or she does not know or is not able to answer; the appraiser must simply indicate, diplomatically, that it is the policy of the Department for the Right of Way Agent to answer such questions. This is not a reflection on the appraiser's ability to interpret plans. The fact that no two people ever explain something in the same way must be kept in mind. This often causes property owners to think they are getting two different stories. This feeling may cause mistrust and a breakdown in negotiations. The appraiser is responsible for interpreting or having the Area Appraiser interpret the plans to the extent that the proposed construction may affect the value of the remainder. In the event the appraiser has difficulties interpreting plans or any other items supplied by the Department of Transportation, he or she shall direct any inquiries only to the Area Appraiser.

5.08 CONFLICT OF INTERESTS

Under no circumstances is any appraiser to be assigned to appraise any parcel in which he or she may hold, or subsequently acquire, any interest. In addition, the appraiser shall not be assigned any parcel wherein the valuation might be influenced by his or her personal interest in other property. The Area Appraiser will usually have no way of knowing whether or not a conflict of interest exists. It shall be the ethical responsibility of the individual appraiser to refuse any

assignments where such a conflict occurs. In questionable or borderline cases, it shall be the responsibility of the appraiser to advise the Area Appraiser of all the facts in order that a decision may be made as to whether or not it would be proper for the appraiser to accept the assignment.

General Statute [136-13](#) reads:

- (A) It shall be unlawful for any person, firm, or corporation to, directly, or indirectly, corruptly give, offer, or promise anything of value to any member of the Department of Transportation, or any officer or employee of the Department of Transportation, or to promise any member of the Department of Transportation or any officer or employee of the Department of Transportation to give anything of value to any other person with intent: (1) to influence any official act of any member of the Department of Transportation; or (2) to influence such member of the Department or any officer or employee of the Department to commit or aid in committing or collude in or allow any fraud on the Department or the State of North Carolina; or (3) to induce a member of the Department or any officer or employee of the Department to do or omit to do any act in violation of his lawful duty.
- (B) It shall be unlawful for any member of the Department of Transportation or officer or employee of the Department directly or indirectly, to corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:
 - 1. being influenced in his performance of any official act; or
 - 2. being influenced to commit or aid in committing, or to collude in, or allow any fraud, or to make opportunity for the commission of any fraud on the Department of Transportation or the State of North Carolina; or
 - 3. being induced to do or omit to do any act in violation of his official duty.
- (C) The violation of any of the provisions of this Section shall be cause for forfeiture of public office and shall be a felony punishable by a fine of not more than twenty thousand dollars (\$20,000), or three times the monetary equivalent of the thing of value, whichever is greater, or imprisonment of not more than ten (10) years, or by both such fine and imprisonment.

5.09 QUALIFICATIONS OF FEE APPRAISERS

Fee Appraisers employed by the Department of Transportation are professional appraisers, selected on the basis of recognized experience in the type of property to be appraised. Some of the foremost requirements for use of an appraiser are integrity, character, and reputation. The appraiser must be clean

and neat in appearance, and be physically able to complete property inspections. Assuming that the appraiser possesses all of the above attributes, he or she then must have the proper background of education, training and ability to carry out any specific assignments given. There are no educational limitations for fee appraisers. Education and experience will vary with the individual (s) and the type of property to be appraised. The limitations and qualification of individual appraisers must be considered very carefully by the Area Appraiser when making assignments. Every Fee Appraiser must furnish the Department of Transportation with a resume of his or her qualifications, using the Experience Questionnaire for Fee Appraisers, [FRM5-A](#).

5.10 EXPERIENCE QUESTIONNAIRE

Fee Appraisers employed by the Department of Transportation shall be in compliance with the North Carolina Real Estate Appraisal Act - State Statute **93-A, Article 5**, Real Estate Appraisers. Fee Appraisers are selected on the basis of recognized experience in the type of property to be appraised. The Appraiser must have the proper background of education, training, and ability to carry out specific assignments given. The limitations and qualifications of individual appraisers must be considered very carefully by the Area Appraiser when making assignments. Every Fee Appraiser shall prepare an Experience Questionnaire for Fee Appraiser, [FRM5-A](#). This form is prepared and submitted electronically to the appropriate Area Appraiser, who will then forward to the State Appraiser with the necessary recommendation. The Appraiser's work is evaluated for characteristics such as punctuality, court preparation, and quality of work, documentation, attitude, knowledge, skill and dependability. The experience questionnaires shall be updated periodically. However, evidence of current State Certification shall be submitted to the Department annually.

5.11 APPRAISAL FEE PROPOSAL

The number of appraisers who can do appraisal work in accordance with the Department of Transportation's requirements within a reasonable period of time is very limited. Therefore, the Area Appraiser must solicit appraisal services from only those who are qualified to perform the assignment. The Department of Transportation contracts for appraisal services in a manner that provides maximum open and free competition. Typically, appraisal services are solicited from more than one source. The Fee Appraiser shall submit an appraisal fee proposal to the Area Appraiser on [FRM5-B](#), provided for that purpose. This form will be prepared by the Area Appraiser and submitted electronically to the appraiser. The form will contain the assigned parcel numbers, owner, the appraisal premise and minimum requirements. The

appraiser must view the properties and enter a fee proposal for each parcel and return to the Area Appraiser, electronically. Discussion with the Area Appraiser as to the appraisal premise or work required is necessary, in fact, encouraged. However, no communication or negotiation as to fees shall be permitted until the appraiser's proposal is received by the Area Appraiser. This form is used in the fee bidding process, or negotiation.

5.12 THE APPRAISAL CONTRACT

After the Area Appraiser has reviewed the Appraisal Fee Proposal, [FRM5-B](#), he/she will either accept/reject same. Once the appraiser is selected, an Appraisal Contract, [FRM5-C](#), will be prepared. The appraiser's acknowledgment binds him or her to all provisions set out in the contract. It is necessary that the appraiser read the contract and the guides referred to therein. Particular note must be given to paragraph 13 of the contract. The contract is to be properly signed by both the specified Appraiser and the Area Appraiser, electronically, before being transmitted to the State Appraiser on [FRM5-D](#).

5.13 CONTRACT EXTENSIONS

In the event the appraiser realizes that he or she will not be able to complete the assignment on time, he or she shall apply in writing, either by letter or email, to the Area Appraiser for an extension of time early enough for the Area Appraiser to consider the request and reply before the contract termination date. The appraiser's request for an extension must include his reasons for the request as well as a new due date for the contract. The Area Appraiser will consider the request and reply in writing whether an extension is to be granted or not. Copies of both documents are to be stored along with the contract, thereby becoming a part of the contract. This procedure also applies to any interim completion dates with the contract for complex or unusual assignments. Failure to comply with these terms will cancel the contract as provided therein. In the event the appraiser is delayed by an action of the Department, such as a change in plans, the Area Appraiser should grant in writing a reasonable extension of time in which to complete the contract.

5.14 FLEXIBILITY OF REQUIREMENTS

The requirements for rendering appraisals are flexible to the extent that certain portions may be omitted when found to be inapplicable for the parcel being appraised, provided the appraiser secures prior concurrence from the Area Appraiser and includes a logical explanation, that conforms to **USPAP**, for such omissions in the appraisal report. The appraiser shall exercise common

sense and sound judgment in the application of these requirements to the end that the appraisal report will properly fit the property being appraised.

5.15 STATEMENTS FOR APPRAISAL SERVICES

All Statements for appraisal services rendered, pretrial conferences, appraisal conferences, or appearances in court shall be submitted to the Area Appraiser on the Statement of Appraisal Services, [FRM5-E](#), electronically. Statements for services rendered shall contain the following information: the Appraiser's name and telephone number, to whom the check is to be made payable, a statement giving the specific type of appraisal made or service rendered, the date the statement is submitted, the identification and project numbers, county, names of property owners, parcel numbers, date of the appraisal contract, individual fee for each parcel or itemized hourly charge, total amount of the statement, certification that the statement is correct and that no part thereof has been previously paid, the appraiser's electronic signature and his Vendor number. The appraisal reports are reviewed for obvious errors before the statement for services is presented for payment. If errors are found, the report and the statement are returned to the appraiser for correction immediately. In most cases it is not advisable to hold the statement until the final review of the appraisal. Assuming that the report appears correct, the statement should then be checked for mathematical accuracy and conformance with the contract, after which it is sent to the State Appraiser with the recommendation of the Area Appraiser that it be paid. The statement is sent electronically along with a Statement Transmittal, [FRM5-F](#). In most cases, a Direct Deposit for these services will be made into the Vendor's account of choice, or payment will be made by check. Statements for pretrial conferences and court testimony are also sent to the Area Appraiser in those cases where the fee appraiser is under contract. In this situation, the statements are to be checked for mathematical accuracy and conformance with the contract, and forwarded to the Trial Attorney handling that particular case for further processing. When witnesses are hired by the Trial or Associate Attorney, and are not covered by contract, the statements will be handled entirely by the attorneys.

Occasionally Fee Appraisers will send in a second statement for services if they do not receive prompt payment of the first statements. This practice should be discouraged because it may result in double payment for services. In order to minimize this possibility, the first statement should be handled promptly, but if it appears that the first statement may have been lost or misplaced, then any further statement should be clearly identified as a duplicate and will be accompanied by an explanation of the necessity for the duplicate statement.

5.16 GENERAL VALUATION INFORMATION

It is presumed that the appraiser is familiar with the accepted principles of real

estate valuation and the appraisal process. [The NCDOT Real Estate Appraisal Standards and Legal Principles](#) is not intended to educate the appraiser. Appraisal premises and technical data are furnished the appraiser for assistance in making appraisals for the Department of Transportation. Except where otherwise stipulated by the Area Appraiser, the Income Capitalization Approach to value must be used in appraising investment type properties. The Sales Comparison Approach is required in appraising all types of property, except in those areas where competitive sales are virtually nonexistent. In such cases, the Cost Approach must be applied. The Cost Approach will generally be applied in appraising special purpose properties. The Area Appraiser will provide the appraisal premise in unusual situations at the time of the assignment.

5.17 SUPERFLUOUS ENTRIES

The Department of Transportation is interested only in a clear, concise word picture of the subject property, together with the facts and reasons which develop the appraiser's conclusion of value. Flowery or repetitious phrases and excess wording simply add bulk to the appraisal report and should be omitted. The appraisal report should be typed, single spaced, neat and legible, and transmitted electronically.

5.18 APPRAISAL COPIES

Generally, one (1) copy of each appraisal report will be submitted electronically to the Area Appraiser for review and further handling. The appraisal must be of good quality and completely legible. It is a requirement that the Appraisal Summary Sheet and the Certificate of Appraiser both be signed by the appraiser electronically.

5.19 DATA COLLECTION

The appraiser should consider all pertinent sales and properties offered for sale in his/ her investigation of the market. However, for reasons of brevity and conciseness, the appraiser should refer to or include in the report only those which are considered to be most comparable to the property being appraised. An appraisal report with three or four good comparables which have been carefully analyzed and related to the subject property is much better than a report with a dozen or more comparables which are difficult to relate to the subject property or require inordinate adjustments. Regardless of which value approach the appraiser relies upon, three comparables are considered minimum for each value approach developed (before and after). If current listings of comparable properties are used, these must be in addition to the minimum three sales. It should also be remembered that listings generally

indicate the upper limit of Market Value and should be considered accordingly.

5.20 BASIC DATA REPORT

A basic data report may be prepared, with the concurrence of the Area Appraiser. The basic data report must contain the details and analyses of comparable sales, offerings, and retails. During the analysis of these sales, the appraiser may justify any time adjustment, local reproduction cost, deterioration and obsolescence, and any other economic factors pertaining to the assignment. The appraiser may wish to include such items as city and neighborhood data, limiting condition, etc. It is imperative that the appraiser bear in mind that the basic data report is a part of the appraisal report and its contents pertaining to analyses of data are confidential.

A sales location map shall be included in the basic data report. All information concerning a comparable sale is required in each individual report or in a basic data report and shall be briefly referred to in the report itself in addition to the inclusion of the sales form in the Addenda.

Identified photographs and sketches of each comparable as set out in are required in the body of or addendum to each copy of the appraisal report or in a basic data report.

A specific reference to the contract date must appear on the cover of the basic data report. A basic data report prepared as part of an appraisal assignment is not to be considered or paid for as a separate item. It shall be a method of presenting data which has been gathered and analyzed as part of the whole assignment.

5.20A DESCRIPTION AND ANALYSIS OF COMPARABLES

The appraisal report or basic data report shall contain an adequate narrative description of comparable sales and/or rentals, or the report shall include the Comparable Sales Form, [FRM5-G](#), for each sale or rental as mutually agreed with the Area Appraiser. Information about each sale shall include but not be limited to the following:

- | | |
|-----------------------|----------------------------------|
| 1. Date | 15. Size |
| 2. Deed Book and Page | 16. Shape |
| 3. Stamps | 17. Topography |
| 4. County | 18. Existing R/W in Total Area |
| 5. Grantor | 19. Area Cleared and Area Wooded |
| 6. Grantee | 20. Soil Type |
| 7. Location | 21. Drainage |
| 8. Sales Price | 22. Available Utilities |

- | | |
|----------------------------------|---------------------------------|
| 9. Confirmed by (Name) | 23. Access |
| 10. Financing | 24. Frontage |
| 11. Condition of Sale and Reason | 25. Improvements |
| 12. Present Use | 26. Unit Price |
| 13. Zoning | 27. Tax Identification |
| 14. Highest and Best Use | 28. Other Pertinent Information |

Additional information for rental comparables should also include:

- | | |
|-------------------|---------------------------------|
| 29. Lessor | 33. Vacancy and Collection Data |
| 30. Lessee | 34. Expenses |
| 31. Rentable Area | 35. Term |
| 32. Rent | |

An analysis of each sale shall show the degree of comparability between the sale and subject by explaining the difference(s) between them, together with appropriate individual adjustments for the difference(s) either in dollars or percentages. A summary of the appraiser's analysis is to be exhibited in chart form. The chart shall be accompanied by a narrative explanation of the analysis and justification for any and all adjustments.

5.21 CONFIRMATION OF COMPARABLES

All comparables shall be confirmed by the Grantor, Grantee, Lessor, Lessee or the Agent handling the transaction. These confirmations as well as any additional pertinent information should be included within the report or Value opinion. Care must be exercised when verifying comparables to assure that the actual total amount paid for the property is shown, not a figure which may represent a net amount received by the seller after brokerage or other fees have been deducted. It is believed by many experts in the field that very few, if any, transactions in real estate meet the accepted legal definitions of Fair Market Value, and for this reason, conditions surrounding each comparable must be determined and considered carefully. Any deviation from these requirements shall be made only with the approval of the Area Appraiser and explained in the report. Financing terms shall be reported. The effect of financing shall be discussed if such had an influence on the comparable price. It is preferable that all comparables be confirmed by the buyer, seller or lessor, lessee. Motivation, financing, and conditions of the comparables are generally more reliable when the appraiser has discussed the transactions with the grantor, grantee, or lessor, lessee. Comparables giving entities such as corporations as grantor, grantee, lessor or lessee shall be investigated by the appraiser to assure that the principals are completely separate.

5.22 THE NARRATIVE REPORT FORMAT

This NCDOT Real Estate Appraisal Standards and Legal Principles as well as The Uniform Standards of Professional Appraisal Practice pertain primarily to the narrative report. When making the assignment, the Area Appraiser controls the extent to which the requirements outlined in the NCDOT Real Estate Appraisal Standards and Legal Principles will be employed as they relate to the specific appraisal problem. The Preamble page is the first page of the Appraisal Report following the Appraisal Summary Sheet. The large volume of appraisal reports handled by the Department of Transportation requires that the narrative appraisal report follow the sequence outlined by the NCDOT Real Estate Appraisal Standards and Legal Principles beginning with Item [FRM5-H](#), The Appraisal Summary Sheet and concluding with [FRM5-J](#), the Certificate of Appraiser.

5.23 APPRAISAL SUMMARY SHEET

For most clients, the appraiser will submit the appraisal along with a transmittal letter. The Appraisal Summary Sheet, [FRM5-H](#), serves as the transmittal letter for appraisals submitted to the Department of Transportation. Therefore, the appraiser's seal/stamp shall accompany his/her signature on the Appraisal Summary Sheet. The seal/stamp shall be as close to the signature as possible without compromising any pertinent data. This form shall always be the first, or cover sheet, of the appraisal report, and no other cover sheet shall be used.

Upon assignment, the fee or staff appraiser is furnished an Appraisal Request Form ([FRM4-B](#)) and an Information Sheet, [FRM4-H](#). The Appraisal Request Form contains the name of the property owner(s), location and size of the property, areas in the taking, area(s) remaining, improvements to be acquired and improvements remaining, if any, for each parcel assigned. Additional information assists the appraiser in contacting the property owner(s)/representative(s). [FRM4-H](#) provides the appraiser with information obtained from the property owner by the Right of Way Agent on the initial contact. Information contained on this form that is pertinent to the appraisal report should be verified by the appraiser. It is the responsibility of the Right of Way Agent to list all improvements to be acquired and to make reference to all others on the subject property. It shall be the responsibility of the appraiser to verify this information. Errors found should be reported immediately to the Area Appraiser. Under no circumstances shall the appraiser make any changes without the prior approval of the Area Appraiser.

5.24 PREAMBLE

A. Objective of the Appraisal and Purpose of Report

The objective of this appraisal is to estimate the market value of the subject property. The purpose of this report is to present data and analyses which

support the opinion of market value.

B. Definition of Market Value

As defined in The Dictionary of Real Estate Appraisal, 5th Edition, market value is the amount in cash, or on terms reasonably equivalent in cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

C. Scope of the Appraisal

The scope of this appraisal involves an inspection of the subject property and general area, research into the market for sales and other comparable information, analysis of the findings, and a report of the findings in a narrative format.

D. Hazardous Material Statement

Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, ureaformaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The value opinion is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client/property owner is urged to retain an expert in this field, if desired. That is, the subject property is appraised "as clean."

E. Americans with Disabilities Act

The appraiser has not made a specific compliance survey and analysis of the subject parcel to determine whether or not it is in conformity with the various detailed requirements of the **American with Disabilities Act** ("ADA"). It is possible that a compliance survey of the property together with a detailed analysis of the requirements of the ADA could reveal that the subject parcel is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, the appraiser did not consider possible non-compliance with the requirements of ADA in estimating the value of the subject.

The Preamble, [FRM5-I](#), is to be attached to the appraisal following the

5.25 INSPECTION OF THE PROPERTY

Federal Statutes make it a requirement that the owner or his/her authorized representative be given an opportunity to accompany the appraiser during the inspection of the property.

In this first item of the report, the appraiser shall state the date or dates of the inspection of the subject property, the name of the owner or the owner's representative with whom the property was inspected, and any pertinent comments relative to the claim.

The appraiser shall explain in this section why, if for any reason, inspection of the property was made without the owner or his representative being present. In the case of absentee owner, it is expected that if the owner wishes to accompany the appraiser, he/she should make arrangements to either be present in a reasonable length of time or designate a local representative or agent to appear for him/her. A period of two weeks or more would be considered unreasonable as projects and appraisal contracts that are set up on a predetermined time schedule cannot be delayed for an indefinite period.

Unless a specific date of appraisal is furnished the date of the appraisal shall be the date that the appraiser made the final inspection of the property.

5.26 DESCRIPTION AND ANALYSIS OF THE MARKETING AREA NEIGHBORHOOD AND DISTRICT

The data included in this section should relate the four forces affecting value-economic, social, physical and governmental-to the present state of the neighborhood with its past and probable future and to the subject property. The analysis of the neighborhood will vary with the complexity of the property being appraised and the rate of change experienced in the neighborhood. The discussion should include such information as it directly affects the appraised property together with the appraiser's conclusions as to significant trends affecting the property and the neighborhood.

It is improper to base a conclusion or opinion of value, or a conclusion with respect to neighborhood trends, upon stereotyped or biased presumptions relating to race, color, religion, sex or national origin or upon unsupported presumptions relating to the effective age or remaining life of the property being appraised or the life expectancy of the neighborhood in which it is located. Racial, religious, and ethnic factors are deemed unreliable predictors of value trends or price variances.

5.27 DESCRIPTION OF THE LAND OR SITE

This description should be concise, but complete enough to give a good mental picture of the land. The appraiser shall describe the land by its present use and physical appearance, noting such pertinent factors as area, existing means of ingress and egress, dimension, location, topography, shape, soil types, mineral deposits, drainage, available utilities, allotments, and any other important features which may affect or influence value.

5.28 DESCRIPTION OF THE IMPROVEMENTS

The description of the buildings and other improvements may vary somewhat depending upon the circumstances of a particular parcel. If the buildings are valuable and will be seriously affected by the highway construction, the description shall be comprehensive; if they are of little or nominal value, the description shall be somewhat less comprehensive.

With the approval of the Area Appraiser, and when it is obvious that there is no change in the value of the buildings, the appraiser may report a brief description and opinion of value for these buildings.

The appraiser is required to inspect all buildings on the subject property, whether they will be affected by the taking or not. It is essential that the owner be aware of the appraiser's inspection.

A description of the buildings should include, but not be limited to, the type and quality of construction, physical age, effective age, remaining economic life, number and kind of rooms, size, square or cubic content, fixtures, equipment, condition, and any other pertinent features.

5.29 ZONING INFORMATION

The appraiser shall state the present zoning affecting the subject property with an explanation or definition of the applicable zoning requirements. The appraiser shall also state whether the investigation revealed any probable change in the zoning, and if so, the probable future zoning and also an opinion of its effect on the subject property. Caution: Existing or proposed zoning does not necessarily dictate or indicate the highest and best or most profitable use of a property. Thus, if there is a reasonable probability that the zoning classification will be changed, this probability should be considered-but only to the extent that it affects market value at the effective date of the appraisal.

5.30 PROPERTY TAX

Although the value of the subject is to be estimated by the appraiser without reliance on the value indicated by tax record, this information is important to the Reviewing Appraiser and the Negotiator. The report shall give appraised value and year, assessed value, and the annual tax burden. If there is a substantial difference between the appraiser's estimated value of the subject property and the value indicated by the tax records, the appraiser shall comment on such divergences. When the tax value is higher than that estimated by the appraiser, and no discussion of this factor is included in the narration, the report shall not be acceptable.

5.31 PUBLIC AND PRIVATE RESTRICTIONS

Private agreements contained in the deed and public restrictions affecting the subject property shall be discussed. These restrictions could include easements, Greenway Belts, Health Department Regulations, environmental influences, etc. In rural areas, it is important to discuss the effect of Health Department Regulations on the subject property as the acquisition may render the remaining property uninhabitable or unusable for building purposes due to area and/or soil capacity requirements.

5.32 HISTORY OF THE PROPERTY

A history of the subject property covering the past five years shall be entered. If the property has changed hands within the past five years, the appraiser must give the recorded data of each transfer giving all pertinent facts including a confirmed sales price. A recent sale of the subject property can be a significant indicator of value. When considering a sale of the subject, the appraiser must determine whether there had been any improvements to or changes made in the property and to what extent they might have affected value or the sale price. If the sale of the subject is not employed in the valuation process, then the appraiser must explain why it was not employed. The appraiser must also enter any out-conveyance from the parent tract of the subject property within the past five years. If the property, or any part thereof, is on the market for sale or lease, under contract for sale or lease, the details of the status to include offering price, are to be explained. If there have been no transfers of the subject property within the past five year, the appraisers shall state that fact and give the date the present owner acquired the property, the book and page of record, if recorded, and any other facts pertinent to ownership. The Department of Transportation simply wants to know when and how the property was acquired and from whom. An appraisal report not showing the history of the subject property will be returned to the appraiser and payment for his or her services will be withheld until this part of the report is completed.

5.33 HIGHEST AND BEST USE ESTIMATE

The appraiser shall explain his or her opinion of the highest and best use of subject property. Highest and best use is defined in 5th Edition of The Dictionary of Real Estate Appraisal as, "The reasonably probable and legal use of vacant land or improved property, which is physically possible; appropriately supported, financially feasible, and that results in the highest value." The principle of the highest and best use is extremely important in estimating fair market value and the appraiser must be cautious in its determination, particularly if the most profitable use is different from the present use of the subject property. The appraiser must fully explain all reasoning in the development of highest and best use. A statement without explanation, giving an opinion of highest and best use, renders the report unacceptable. The appraiser should comment on the existing land use pattern surrounding the subject property and its relationship or position in that use pattern. It will also be helpful if the appraiser indicates whether the use is consistent with the present or proposed zoning of the subject property.

5.34 VALUATION OF PROPERTY BEFORE THE TAKING

At least one of the three generally accepted approaches to value must be employed where applicable in all narrative highway appraisals. The Income Capitalization Approach to value shall be used on investment type properties and at least the Sales Comparison Approach on other types of properties, except special purpose properties, unless otherwise specified by the Area Appraiser. The availability of market sales of competitive properties will generally be the factor in deciding whether to use the Sales Comparison Approach or to rely on the Cost Approach. All pertinent calculations used in developing the approaches to value shall be shown in both the before and after appraisals. All computations will be rounded to the nearest appropriate dollar amount in the appraisal. The appraiser should exercise caution in the rounding process; the appraiser must be consistent in rounding. If the appraiser rounds up in the Before Value Estimate, then to be consistent, the appraiser shall round up in the After Value Estimate. There will be no rounding on the summary sheet. NOTE: Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation of the property.

5.35 OMISSION OF AN APPROACH TO VALUE

Even though the appraiser may have been allowed by the Area Appraiser to omit one or more approaches to value, he or she shall still explain the reasons for the omission in the appraisal report. An appraisal report, which omits an approach to value without comment, explanation, support and reference to prior

concurrence by the Area Appraiser, shall be unacceptable.

5.36 SALES COMPARISON APPROACH

The Sales Comparison Approach is considered to be the strongest for condemnation purposes. This approach is generally better understood by the public as a whole and more acceptable to the courts. Greatest emphasis should be placed on this approach whenever possible. A minimum of three comparables shall be required. If listings of comparable properties are used, these shall be in addition to the minimum three comparables. A summary of the appraiser's analysis is to be exhibited in chart form. The chart shall be accompanied by a narrative explanation of the analysis and justification for any and all adjustments. The appraiser shall show an allocation for land and improvements upon reconciling the final value conclusions by the Sales Comparison Approach.

5.37 COST APPROACH

The Cost Approach is often the only applicable one when appraising special purpose properties such as schools, churches, or other properties, which rarely sell on the market and produce no income. This approach is also useful when there are insufficient competitive sales to adequately employ the Sales Comparison Approach. If it is obvious that the highest and best use of the land as though vacant is more profitable than the existing use of the whole property (land and improvements), it then may not be necessary to include a depreciated reproduction cost of the improvements merely to show a zero value for such improvements. The decision to omit these mechanical functions shall be in concurrence with the Area Appraiser at the time of the appraisal assignment. There are assignments, such as providing information for replacement housing payment, when it will be necessary to estimate the reproduction cost new when improvements contribute no value under the highest and best use concept. Deprecation shall show the dollar amounts for each of the three categories-physical deterioration, functional obsolescence, and economic obsolescence.

5.38 LAND VALUATION

The value of the land, as if vacant and available for its highest and best use, shall be estimated by the use of sales of similar properties in the same manner as that employed in the Sales Comparison Approach. It is preferable that land value not be estimated by extraction from a sale or sales of improved properties. A minimum of three comparables shall be required. If listings of comparable properties are used, these must be in addition to the minimum three comparables. A summary of the appraiser's analysis is to be exhibited in

chart form. The chart shall be accompanied by a narrative explanation of the analysis and justification for any and all adjustments.

5.39 BUILDING REPRODUCTION COST

Reproduction cost is the cost of reproducing an improvement with as nearly an exact replica as modern materials and equipment will allow, as of a given date. The appraiser's estimate of reproduction cost shall be substantiated by one of the generally accepted methods, such as the quantity survey, unit-in-place, or comparison (square foot or cubic foot), etc. Cost data from current updated cost manuals will be acceptable if set out properly, giving page references, and accompanied by a narrative explanation. Any cost indications derived through cost manuals shall be verified by specific local sources. In some instances, a cost estimator may be consulted or employed by the appraiser. If the appraiser intends to employ a cost estimator or consultant to assist in the estimate of reproduction cost, he or she shall indicate who will be employed in the Appraisal Fee Proposal. The appraiser's fee proposal shall include, any cost estimator's or consultant's fee. In any event, the appraisal report shall state which method was used and the appraiser's reasons for using it. Caution: Replacement cost, which assumes replacement of subject improvements with those of like utility, is not acceptable in highway appraisals, except as an element in measuring functional obsolescence.

5.40 ESTIMATE OF ACCRUED DEPRECIATION

Depreciation is defined as the difference between the value of the improvements and the cost of their reproduction at a given time. Depreciation is caused by physical deterioration, functional obsolescence, and economic obsolescence. Depreciation may be estimated in the Cost Approach by one of several methods depending upon the extent to which improvements are affected by the taking. That is, if a structure is taken or has a resulting loss in value created by the taking, the Engineering Method, the Breakdown Method, or the Market Method shall be employed. These methods of depreciation shall support the depreciation items existing at the time of the inspection of the structure(s) as included in the description in the appraisal report. When the total depreciation can be supported by the market, a lump-sum amount is acceptable, provided the dollar amount of each type of depreciation is given. In the case of special purpose or other properties where market data is not available and the Cost Approach is used to support the value estimate, each type of depreciation shall be shown separately as either a dollar amount or a percentage, and a detailed explanation of each type of depreciation is required. The detailed explanation shall contain the appraiser's reasoning for each type of depreciation in sufficient detail to allow a Review Appraiser to make a sound judgment of the validity and acceptability of each type of depreciation measure. When in concurrence with the Area Appraiser, the Age-Life Method of

depreciation may be employed in appraisal reports where improvements are not taken or affected, and where structures having nominal value such as sheds and pump houses are involved. The methods for measuring depreciation described herein and other methods of estimating accrued depreciation may be found in most good appraisals texts or professional journals. A mere statement to the effect that a certain percent of depreciation exists shall not be sufficient. An appraisal report using the Cost Approach which does not contain an explanation for each type of accrued depreciation in the subject property and which does not show the development of the method used by the appraiser shall not be acceptable.

5.41 INCOME CAPITALIZATION APPROACH

The Income Capitalization Approach is required when appraising investment type property unless stipulated otherwise by the Area Appraiser. This approach is relevant when the primary purpose of ownership of the property is for its ability to produce a net annual income that is in balance with the highest and best use of the property. The income produced must be attributable to the real property itself and not to the owner, manager, or to the business operating on the subject property.

5.42 THE POTENTIAL GROSS INCOME ESTIMATE

The appraiser should, whenever possible, examine the records of actual income produced by a property; keeping in mind that a gross income estimate for appraisal purposes could be quite different from the actual income produced, and should be based on what similar local properties are commanding for rent. All existing leases shall be discussed. The economic rent may be more or less than the present actual income produced. Potential gross income includes the annual income from all parts of the real property as though it were fully occupied. All rental properties used to estimate economic rent shall be identified, giving their location, description, lessee, lessor, and terms of lease (amount of rent, length, options, covenants, etc.). A minimum of three comparables shall be required. If listings of comparable properties are used, these shall be in addition to the minimum three comparables. A summary of the appraiser's analysis is to be exhibited in chart form. The chart shall be accompanied by a narrative explanation of the analysis and justification for any and all adjustments.

5.43 VACANCY AND COLLECTION LOSS

It would be unusual to expect the property to be occupied fully throughout its useful life. The appraiser will usually discount the gross income estimate to allow for any vacancy and collection loss, with occasional exceptions, such as

properties that normally rent to Class A tenants on long-term leases. The percentage of vacancy and collection loss will vary according to the type of property, neighborhood factors, and general business conditions. The estimate of potential gross income, based on economic rents, plus any service income, minus the allowance for vacancy and collection loss, is called "Effective Gross Income".

5.44 EXPENSES AND NET INCOME

From the Effective Gross Income, the appraiser shall deduct all expenses chargeable to the operation of the real estate. The appraiser shall estimate the probable future expenses of operating the real property based on the analysis of more than one year's experience. After all expenses, fixed and variable, have been estimated, the total is deducted from the Effective Gross Income which yields the net income before capitalization.

5.45 CAPITALIZATION

The method of capitalization used in a particular appraisal will be left to the discretion of the appraiser. The appraiser should understand the different methods to the extent that he or she can determine which method is most applicable to the given appraisal problem.

5.46 CAPITALIZATION RATES

The appraiser may estimate the capitalization rate by employing a variety of current accepted appraisal techniques. The quantity and quality of available data will determine which technique is most applicable. Accepted techniques include those derived from comparable sales, gross income multipliers, band of investment consisting of mortgage and equity components, band of investments consisting of land and building components and the debt coverage formula. It is most necessary that the capitalization rate be supported and documented by appropriate data. The most effective guide to the proper rate at which the net income should be capitalized is the ratio of net income to sales prices in similar transactions.

5.47 RENT MULTIPLIERS

When appraising residential properties, rent multipliers are used by some appraisers in their Sales Comparison Approach, and by others in the Income Capitalization Approach. It makes no difference where multipliers are used in the appraisal as long as the multiplier is adequately and properly documented

and supported by sales and rentals of similar properties. When possible, monthly multipliers should be employed in residential properties when one dwelling is involved. When several dwellings are being appraised under a single ownership, such as rental housing held for investment purposes, it will be more desirable for the appraiser to process that income in the same manner as income-producing property through the use of a reconstructed operating statement.

5.48 INDICATED VALUE BY THE INCOME CAPITALIZATION APPROACH

The total value must be allocated by separating land value(s) and improvement value(s).

5.49 RECONCILING BEFORE VALUE INDICATIONS

After the appraiser has developed the applicable approaches to value, he or she shall then reconcile them, stating which approach is considered to be the most reliable indication of value and the reasons for selecting the approach. In appraisals made for the Department of Transportation, it is preferred that the appraiser select the indication of value from the approach relied upon and use that dollar amount as the final estimate of value of the entire property before the taking. It is necessary that the appraiser show an allocation between land and improvements in the final reconciliation.

5.50 DESCRIPTION OF THE TAKING

The appraiser shall describe that which is to be acquired under two subheadings:

1. Land - A physical description of the land to be acquired will be made including but not limited to size, shape, location and type/use (e.g. front yard, wetland, parking lot). The description shall also include and describe separately any additional areas outside the right of way designated as slopes, drainage, or construction easements.
2. Improvements - Improvements to be acquired shall be described in sufficient detail to effectively identify those improvements being taken. A careful analysis shall be made regarding the taking of any water supply (wells) and/or septic systems such as tanks and nitrification lines. In the event the boundaries of the property being appraised fall entirely within the limits of the right of way, a statement describing the acquisition as a total taking will suffice. No discussion of the remainder is necessary.

In summary, the description of the taking shall correlate with the magnitude of the appraisal problem.

5.51 DESCRIPTION OF THE REMAINDER AND THE EFFECTS OF THE TAKING

A description of the subject property remaining after the taking is the next requirement of the appraisal report. The appraiser is expected to use good judgment in this area of the report. If the property being appraised is truly and essentially the same, less the taking, in the after situation as in the before situation and there are obviously no damages to this remainder portion, then the appraiser may reduce somewhat the detail of the description and refer to the description made in the Before Value Estimate. Referral to the description made in the Before Value Estimate shall not be acceptable in any case where there are apparent damages or benefits to the remainder property. The appraiser shall discuss the effect of the taking and/or project construction on the subject property. The appraiser shall elaborate on such factors as legal control of access, physical accessibility, change in grade, cuts and fills, effect on water and sewerage, change in use, isolation, severance, and any other factor which, in the opinion of the appraiser, will affect the market value of the subject property as a result of the highway taking. Caution: Different types of easements will have different effects on a particular property. Some permanent types of easement may have less effect on value than a temporary one. The appraiser shall consider carefully each easement as to its ultimate effect on the market value of the property. If the appraiser has a problem concerning easements, the Area Appraiser should be consulted. Any one or a combination of any of the aforementioned factors may reduce any part of a septic system and cause the remainder to be uninhabitable. When considering the effects of a taking on a remainder, the appraiser shall refer regularly to those sections of the NCDOT Real Estate Appraisal Standards and Legal Principles dealing with compensable and non-compensable damages and benefits.

5.52 HIGHEST AND BEST USE OF THE REMAINDER

The appraiser shall make an estimate of the highest and best use of the property remaining after the taking as if construction were completed and the new highway facility open to traffic. The definition for highest and best use shall be applied as in the before value estimate. If the taking has caused a change in highest and best use, the appraiser shall state the change, explain the reasons and conclusions, and comment on any probable or possible zoning changes. If, in the opinion of the appraiser, the highest and best use of the property after the taking is the same as before the taking, a statement to that effect will suffice.

5.53 VALUATION OF PROPERTY AFTER THE TAKING

The value of the remaining property after the taking shall be estimated in the same manner as the value of the entire property before the taking. The application of one or more of the three approaches to value will often become more difficult due to the scarcity of sales and rentals of properties truly comparable to the subject remainder. The appraiser shall make every effort to explain the estimate of value of the remainder in the best manner possible and with the best appraisal techniques since this is usually the main area of contention in negotiating for settlement of a right of way claim. The appraisal premise covering after value appraisals shall be in concurrence with the Area Appraiser prior to assignment. The Estimate of After Value might be supported by using one or more of the following methods:

- A. Sales comparable to the remainder properties. If the same sale or sales employed in the before value are relied upon in the after value, a separate analysis shall be shown on each sale.
- B. Sales of comparable properties from which there have been similar acquisitions or takings for like usages.
- C. Development for the Income Approach on properties which show economic loss or gain as a result of similar acquisitions or takings for like usages.
- D. Indications from severance damage studies as related to similar takings.
- E. Public sales of comparable lands by the State or other public agencies.
- F. In the event the data described in (a) through (e) above are not available, the appraiser shall so state and give the reasoning for the value estimate.
- G. Cost to cure methods when applicable.

In conclusion, the appraiser is cautioned to appraise the remaining property, not the taking. Merely subtracting the value of the part taken from the estimate of before value to arrive at the after value renders the report unacceptable.

5.54 RECONCILING AFTER VALUE INDICATIONS

After obtaining indications of after value by the use of the applicable approach (es) to value, the appraiser shall again reconcile stating the factors considered to be the most reliable indicators of after value and the reasons for relying on those factors. From this reasoning process will come the appraiser's estimate of value of the property remaining after the taking. In appraisals made for the Department of Transportation, it is preferred that the appraiser select the indication of value from the approach relied upon (if more than one approach is

employed) and use that dollar amount as the final estimate of value of the property immediately after the taking. It is necessary that the appraiser show an allocation between land and improvements in the final reconciliation of after value.

5.55 DIFFERENCE IN BEFORE AND AFTER VALUE

When the appraiser's estimate of value of the property remaining immediately after the taking is less than the whole property immediately before the taking, the resulting difference is the amount the property has been reduced in value and will represent the appraiser's estimate of damages. In the event the value of the property after the taking exceeds the value of the property before the taking, the difference will be the amount by which the property has been enhanced in value or benefited. This full amount shall be shown in the appraisal report, but reduced to zero (-0-) by stating "Benefits" on the Summary Sheet as the "Difference Between Before and After Value".

5.56 THE APPRAISAL REPORT ADDENDA

The Addenda of the appraisal report shall contain, but not be limited to, the following data and/or exhibits.

5.57 ALLOCATION

After the appraisal is completed and an estimate of total damages secured, the appraiser shall analyze and tabulate the difference between the before and after value showing a reasonable allocation to land, improvements, damages to the remaining property, and benefits, if any. The allocation shall directly relate to the differences in before and after value for land and improvements shown on the summary sheet. This allocation shall be included as the first item in the Addenda of all copies of the appraisal report.

Example:

Right Of Way	\$0000
Permanent Easements	\$0000
Temporary Easements	\$0000
Total Value of Land Taken	\$0000
Value of Improvements Taken	\$0000

Damages to Remainder	\$0000
Benefits to Remainder	\$0000
Difference Between Before and After Values	\$0000

Also, if any portion of the property being appraised should be tenant-owned, then it shall be necessary for the appraiser to show in the Allocation the separate values for any tenant-owned items(s).

5.58 PHOTOGRAPHS OF THE SUBJECT PROPERTY

The appraisal report shall contain a sufficient number of photographs of any improvements, features, or unusual conditions on the subject property which are affected in value by the project. The appraiser should select positions which enable him to photograph all sides of any affected improvement(s), as well as the area to be acquired, even if vacant land. The project number, parcel number, and owner's name shall be typed at the top of each page of photographs. Each photograph is to be a digital photograph and properly identified by the following: date photograph was taken, by whom, position taken from, and direction of view. Photographs of the subject property shall of sufficient size to afford the viewer a reasonable view of the subject. Any photographs of the subject shall be of acceptable quality.

5.59 SKETCH OF THE SUBJECT PROPERTY

The appraiser will receive a preliminary sketch of the properties to be appraised along with the Summary Sheet(s) and other items when the assignment is received. The appraiser shall verify the information depicted on this sketch to be placed in each copy of the report. The sketch prepared by the appraiser or a qualified person working for the appraiser shall contain and denote the areas, boundaries, and dimensions of subject property with any existing roads or other means of access, existing and/ or proposed right of way lines affecting the property, all buildings, and other improvements which affect value, a North arrow, project and parcel numbers, owner's name, the name of the person who prepared the drawing if other than the appraiser, and any other property features pertinent to the appraisal. Subject photographs shall be illustrated on the sketch showing the photograph number, position taken from, and direction of view. The sketch need not be to scale. A reproduction or cut-out section of the strip map or any other map or sketch furnished the appraiser by the Department of Transportation will be acceptable, provided he or she verifies and agrees with its contents. The sketch shall be included in each copy of the appraisal report.

5.60 FLOOR PLAN OF THE IMPROVEMENTS

A floor plan showing dimensions and relative size and shape of all structures located within the right of way limits or affected by the acquisition shall be included. The relationship of existing and/or proposed right of way lines and any affected structure is required and may be shown on either of the property sketch, the floor plan drawings, or both.

5.61 PHOTOGRAPHS OF COMPARABLES

Identified photographs of comparable sales and rentals used in the report showing all principal, aboveground improvements shall be included in the appraisal report or in a basic data report. The photographs shall be placed in the report in such a manner that they will not be confused with photographs of the subject property. Digital Photographs of any vacant land sales used must be included in the appraisal report or basic data report and placed in the lower right hand corner of the [FRM5-G](#), the Comparable Sales Form.

5.62 SKETCHES OF COMPARABLES

Sketch of any comparable sales or rental used are required and may be placed in the appraisal report with the photographs of same. These sketches can be placed in the lower left hand corner of the [FRM5-G](#), the Comparable Sale Form. The sketches shall contain a close approximation of the property boundaries, land area, general location of improvements, any existing highways or other means of access, property identification, and a North arrow. Sketches of comparable sales do not need to be to scale, nor do they need to be any larger than a 3.5" by 5" photograph. The important factors involving sketches of comparable sales in the report relate to the elements of comparison, such as road frontage, shape, size, etc.

5.63 LOCATION MAP

A legible map of the city, county, or region showing the exact location of those sales and rentals referred to in the report, and the location of the subject property in relation to those sales and rentals, shall appear as an exhibit in the Addenda of the appraisal or in a basic report.

5.64 ADDITIONAL EXHIBITS

The appraiser may include at his or her discretion any additional exhibits, such as subdivision maps, deeds, aerial photographs, or other data which is deemed

necessary or which will make the report more complete or better understood.

5.65 CERTIFICATE OF THE APPRAISER

As the last item in each copy of the report, the appraiser is required to place the executed certificate, the Certificate of Appraiser, [FRM 5-J](#). The appraiser certifies that his or her independent opinion of fair market value as of the date of the appraisal is \$_____ (amount) based upon his or her independent appraisal and the exercise of professional judgment. The certificate is then signed, sealed/stamped and dated. The certificate shows both the date of the report and date of the certificate. When rendering current appraisals for acquisition purposes, the date of the appraisal report shall be the date which the appraiser last inspected the subject property. The appraisal report shall represent the property as it existed at the final inspection, otherwise, a subsequently dated appraisal might well describe a property that has undergone a material or significant change before the last date that the appraiser worked on the appraisal report. Consequently, the postdated appraisal would not represent the property as intended by the appraiser. Appraisal firms are not employed unless an individual appraiser within the firm is specified to be responsible for the valuation. A new certificate shall be prepared whenever there is a change in the appraisal report which affects value, or where the date of valuation changes.

5.66 PROOFREADING THE REPORT

It is imperative that the appraisal report be proofread and all calculations checked by the appraiser. The omission, without logical explanation and prior approval by the Area Appraiser of any required item, renders the report unacceptable.

Any report found to be unacceptable may be returned along with the statement, and payment may be withheld until the appraisal is deemed acceptable. Every effort is made on the part of the Department of Transportation to prevent any undue delays in processing statements for appraisal services.

5.67 ERRORS IN THE APPRAISAL REPORT

In the event errors in math or factual data are found in an appraisal, the Review Appraiser will call or email the appraiser with the necessary corrections or questions. The appraiser shall make the necessary corrections and resubmit to the Area Appraiser. Payment of appraisal fees may be withheld until all necessary corrections have been made.

5.68 FORM APPRAISAL REPORTS

The Uniform Residential Appraisal Report form, Freddie Mac Form #70/Fannie Mae Form #1004 (URAR), will be assigned at the discretion of the Area Appraiser and may be used for appraising total acquisitions of either improved single family residential or 2-4 unit multi-residential properties. The URAR form appraisal report may be used only if the land's highest and best use is single family residential and the property is improved with one single family residence or the land's highest and best use is a 2-4 unit multi-residence and the property is improved with a 2-4 unit multi-residence. The MHAR form should be used with properties improved with manufactured homes considered as realty (to include modular homes, and single or doublewide homes considered as realty). Land Appraisal Report forms and any other appraisal report forms accepted by the NCDOT will be assigned at the discretion of the Area Appraiser.

When using the URAR report format, an Appraisal Summary Sheet, Form [FRM5-H](#); Preamble, Form [FRM5-I](#); and Certificate of the Appraiser, Form [FRM5-J](#); must still be included. All form appraisal reports shall include the following required addenda items: allocation; photographs of the subject property; sketch of the subject property; floor plan of the improvements; comparable sales data sheets, Form [FRM5-G](#); sales location map; and additional exhibits that the appraiser may include which will make the report more complete or better understood. When appraising a total acquisition of either a single-family residence of a 2-4 unit multi-residence, with no remaining or excess land, an allocation between land and improvement values is still required.

5.69 RIGHT OF WAY TRANSMITTAL SUMMARY

This appraisal report will be prepared and transmitted on Form "[FRM5-K](#)", which can be found in the addenda of this Chapter. Technical information identifying the project, location, owner, land area(s) to be acquired, and any improvement(s) to be acquired (or "Cost to Cure" item) are given. This report is designed to appraise the value of the taking and the cost to cure for small items when applicable. This form shall not be used where damages to the remainder, other than "Cost to Cure", will exist. It is the Area Appraiser's responsibility to determine on which properties the Right of Way Transmittal Summary, [FRM 5-K](#), will be used. This report is an appraisal report (not a Restricted Appraisal Report) and should include all of the reporting requirements under Standards Rule 2-2 of the Uniform Standards of Professional Appraisal Practice (USPAP). Standard Rule 2-2 begins on page U-21 of the 2014 – 2015 edition of USPAP with additional information found in Advisory Opinion 11 as shown on page A-24. The addenda should include a copy of the project plans showing the acquisition areas, total property sketch (if not shown on project plans), zoning map, flood map, subject deed, subject tax card, comparable sales along with location map, photographs of the subject property, assumptions and limiting conditions (if any), and the Certificate of Appraiser.

5.70 ITEMS TO BE FURNISHED THE APPRAISER

Upon assignment, the fee or staff appraiser is furnished the *Appraisal Request/Summary Sheet Form, Form [FRM4-B](#), Existing Right of Way Abstract, Form [FRM4-A](#); and the Information Received on Initial Contact Form, Form [FRM4-H](#)*, which contain the name of the property owner(s) location and size of the property, the area(s) in the taking, and the area(s) remaining if any, for each parcel assigned. All appraisers who do work for the Department of Transportation are furnished a copy of the NCDOT Real Estate Appraisal Standards and Legal Principles which assists them in preparing and submitting the appraisal report. Also, to assist the appraiser in an assignment, the Department will furnish or otherwise make available, prior to completion of the appraisal, the following information:

- (a) all pertinent title information which may affect the value of the property if not listed on *the Information Received on Initial Contact Form, Form [FRM4-H](#)*.
- (b) the rights to be acquired,
- (c) any construction features or other adjustments to be undertaken to mitigate damages,
- (d) right of way plans,
- (e) cross sections,
- (f) a sketch of the property to be appraised showing, if a total take, boundary dimensions, location of improvements, and other significant features of the property if not otherwise provided on the right of way plans,
- (g) a sketch of the property to be appraised showing, if a partial taking, the area to be acquired, location of improvements affected by the taking, the area of each remainder, and any other significant features affected by the taking if not otherwise provided on the right of way plans, and
- (h) Equipment Considered Real Property - Realty, [FRM5-M](#) Realty Components and/or Equipment Considered Real Property - Fixed, [FRM5-L](#), if available.

Any errors or discrepancies in the preliminary information furnished the appraiser should immediately be brought to the attention of the Area Appraiser for correction. Under no circumstances should the appraiser directly contact the assigned right of way agent or project engineer without the authorization and/or approval of the Area Appraiser.

5.71 GENERAL LEGAL PRINCIPLES

The following references are furnished for the purpose of informing appraisers for the Department of Transportation of the applicable law to guide them in arriving at an unbiased and competent opinion of fair market value. The Supreme Court of North Carolina has formulated various rules relating to "just compensation" and the measure of damages where private property is taken for

public use by the Department. Each piece of land presents its own set of facts to which this law is applicable. These references are not for the purpose of telling an appraiser what method or approach to use in making his appraisal, but are merely guides as to what may under the law be considered in making the appraisal and what will constitute competent evidence if presented in Court. Regardless of the ability of an appraiser, or knowledge of the facts presented by the property, and property values in the area, it is impossible to make a valid condemnation appraisal without applying these rules and legal concepts.

Some of these rules differ from state to state. A good condemnation appraisal based on Virginia or South Carolina law might be worthless in North Carolina. The Area Appraiser will furnish certain necessary information when requesting an appraisal, such as maps, plans, title certificates, and date of taking. This information plus the facts presented by the property, plus the law as applied by the court, together with the appraiser's own knowledge and experience in valuations should be sufficient for an accurate and unbiased fair market value appraisal of the subject property.

The appraisal is the means of arriving at the difference in fair market value for the purpose of negotiation, and in the event that settlement is not reached, it must serve as the basis for the appraiser's testimony in Court. It is essential that the appraisal follow the rules of law laid down by the Court. A summary of the most important of these rules of law follows:

5.72 MEASURE OF DAMAGES

The measure of damages for the taking of part of a tract for highway purposes is the difference between the fair market value of the entire tract, including improvements, immediately before the taking and the fair market value of the remainder tract including improvements immediately after the taking. The sum includes compensation for the part taken and compensation for injury to the remaining portion, and is to be offset by both general and special benefits accruing to the property from the construction or improvement of the highway. Where the entire tract is taken the measure of damages is the fair market value of the entire tract, including the improvement located thereon, at the time of the taking. The measure of damages has been enacted by the General Assembly as follows in [G.S. 136-112](#):

The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

1. Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.

2. Where the entire tract is taken, the measure of damages for said taking shall be the fair market value of the property at the time of taking.

Fair market value is not the value of the property to the owner, or the value which he places on it, nor is it governed by his willingness or unwillingness to sell. Market value is not the same as replacement value, nor is it the same as replacement value less physical depreciation unless many other factors which affect market value, such as design, style, demand for particular structure in the area, utility, and other sources of functional and economic obsolescence, are taken into consideration. Market value of property is the price which it will bring when it is offered for sale by one who desires but is not obligated to sell it and is bought by one who is under no necessity of having it. This definition assumes that both the willing buyer and the willing seller are fully informed of the physical characteristics of the property and all the uses including the highest and best use to which it may be put. Market value, then, is not the value to the owner for his particular purposes or to the condemnor for his special uses. It is recognized that an owner often receives less than the value of the property to him and that the condemnor pays more than the property is worth for its purposes, but experience has shown that the rule is reasonably satisfactory. Since market value does not fluctuate with the needs of condemnor or condemnee, but with general demand for the property, evidence of loss of profits, damage to good will, expense of relocation, and other such consequential losses are non-compensable. In estimating values on property in condemnation proceedings, the appraiser may consider any and all uses or purposes to which the property is reasonably adapted and to which it might, with reasonable probability, be applied, but has never been applied. However, the availability of the property for future uses must be such as enters into and affects its present market value, and regard must be given to the existing business or wants of the community, or such as may be reasonably expected in the immediate future to affect present market value. The test is "what is the fair value of the property in the market". The uses to be considered must be so reasonably probable as to have an effect on the present market value. Purely imaginative or speculative value should not be considered. Values which are peculiar to the owner and add nothing to the market value are not compensable.

5.73 DATE OF TAKING AND TIME WHEN PROPERTY IS VALUED

In condemnation proceedings the value of the property must be established immediately before and immediately after the date of taking. The date of taking of the property is usually established as of the date of filing of the Complaint and the Declaration of Taking and Deposit in Court, at which time title to the property and the right of possession vests in the Department of Transportation. This date will be furnished by the Area Appraiser. Sometimes the appraisal will be made before and sometimes it will be made after the date of taking, but the values must be as of the time of taking. "Immediately before" refers to the

property in the state in which it existed prior to the date of taking. In arriving at this before figure the appraiser should not consider any affect which the contemplation or knowledge of the pending construction might have upon its market value. "Immediately after" refers to the entire remaining tract in the condition in which it exists except this value must contemplate and be based upon the highway improvement in a completed state rather than some state of construction.

In those instances where the appraisal is made prior to any construction, it is important that the appraiser become familiar with the plans for the project as they may affect the property at the time the appraisal is made, so that in event of testimony in court, the appraiser will be able to testify that his appraisal was made taking into consideration the cuts and/or fills with the road, etc., as shown in the plans.

5.74 NATURE OF TAKING - WHAT IS TAKEN

When the taking occurs, the entire area within the right of way vests in the Department of Transportation. For the purpose of the appraisal, it makes no difference whether the Department of Transportation acquires a permanent easement or fee simple title to the land. In other words, when the taking occurs, all of the real property within the right of way becomes the property of the Department of Transportation and that outside of the right of way remains the property of the landowner. All improvements on the right of way, which are a part of the realty and are not personal property, become the property of the Department of Transportation. If the right of way line goes through an improvement, such as a building, the Department of Transportation will make a determination of whether to take only that portion located within the right of way or the entire improvement (but not the title to the land outside of the right of way upon which it is located) and the appraiser will be advised of this determination. The owner does not have the right to remove improvements taken, nor does the Department of Transportation have the right to move an improvement from the right of way to some other portion of the property in the absence of an agreement.

The appraiser may, however, be advised from time to time by the Area Appraiser that by agreement a certain improvement located within the right of way will be or has been moved to a point designated by the landowner; and if such an agreement does exist between the Department of Transportation and the landowner, the appraiser will not consider the improvement which has been or is to be moved in making his appraisal.

When an improvement is located on the property remaining after taking, the landowner is not entitled to have such improvements moved to a location more suitable to him even though such an improvement may be located in proximity to the right of way after completion of the highway construction. Therefore, the appraiser is not to consider the cost of moving an improvement as an element of damage.

Items of personal property permanently affixed to the realty by the common owner of both to enhance the value of the realty, called "fixtures", are a part of the realty and should be considered as such insofar as they relate to market value. "Trade fixtures" (items of personal property affixed to the realty by one other than the owner of the realty, used exclusively for trade and business, having other than a localized use, and removable without injury to the affixed item of the realty), furniture, stocks of goods and merchandise, farm machinery, etc., are personal property and are not to be considered as taken or has having a bearing on the market value of the property. There is often a fine legal distinction between personal property and real property, especially when dealing with business property and leasehold interests. The Area Appraiser will furnish the appraiser with information on each parcel to be appraised as to which items should be considered as realty. If there is any doubt, the appraiser should confer with the Area Appraiser.

5.75 NOISE

Where it may be relevant, the effect of the introduction of traffic noise from the use of the part taken for highway purposes may be considered in appraising the fair market value of the remainder. Its relevance depends upon highest and best use.

5.76 GENERAL AND SPECIAL BENEFITS

"Special benefits" are those benefits or enhancements in market value which the property owner receives peculiar to his land and not common with the other landowners in the vicinity. The appraiser is to reduce the damages to the remainder and the value of the part taken by all benefits accruing to the land, whether special or general or both. This differs from the rule in most states in that benefits may be set off and deducted from the value of the part taken, as well as damage to the remainder. This, of course, means that if the benefits are equal to or in excess of the value of the part taken and damage to the remainder, then the property owner is entitled to recover no monetary compensation due to the increased value of the land being such compensation, especially since the after value is equal to or in excess of the before value. Of course, the property owner owes the Department of Transportation nothing if the after value exceeds the before value. It might be well here to point out that when the appraiser has arrived at an opinion of market value before and after, the difference will include the elements mentioned above. This can be reduced to a formula:

*Market Value of part taken + damage to market value of remainder
- benefits to market value of remainder = market value before -
market value after.*

5.77 COMPETITIVE SALES AS EVIDENCE OF VALUE BY THE COURT

The appraiser may consider the price paid at voluntary sales of land similar to the land being taken at or about the time of the taking as independent evidence of the value of the land taken. The land must be similar to the land taken; otherwise, the evidence is not admissible on direct examination. Actually no two parcels of lands are exactly alike. Parcels may be compared only where the dissimilarity is reduced to a minimum and allowances or adjustments are made for such dissimilarity. Where the land used as a comparable is markedly dissimilar in nature, condition, location, and zoning classification, then the courts will not permit the use of such comparables as an independent evidence of the value of the land taken. It is within the discretion of the trial judge to determine whether there is a sufficient similarity to render the evidence of the sale admissible. Therefore, if the appraiser is relying upon comparable sales, he or she should make a personal examination of the property and be certain that the comparables are sufficiently similar to the land taken before using them as independent evidence of the value of the land actually taken.

Any purchase or acquisition of property by any public or private agency, authority, jurisdiction, commission, state, municipality, town, city, county, corporation, company, partnership, organization, individual, or entity having condemning power under State or Federal eminent domain laws is unacceptable for use in an appraisal as a competitive or comparable sale, regardless of whether or not the purchase or acquisition was made under the threat of condemnation.

5.78 PRIOR SALES OF SUBJECT PROPERTY

It is an acceptable legal premise that when land is taken in "eminent domain", it is appropriate for evidence of market value to show the price at which it was bought if the sale was voluntary and within a reasonable time of the date of taking. The reasonableness of time is dependent upon the nature of the property, its location, and the surrounding circumstances and conditions. In any event, if the property has been purchased within the past five years, the appraiser should include full details of the purchase in the appraisal report.

5.79 SETTLEMENTS, OFFERS, ETC.

The appraiser should not consider as comparable sales any settlements which have been made by the Department of Transportation with adjoining property owners, or other owners of land involved in construction of the road improvement. These are in the nature of a settlement of a lawsuit and have no bearing on the market value of the property being appraised; furthermore, they are not acceptable as evidence. The appraiser should not consider any unaccepted offers to buy or sell this or any other property as they are not

competent evidence of market value, primarily because it is impossible to know the circumstances surrounding them. At best, unaccepted offers are only secondhand opinions of value to a particular person who may not be under a compulsion to buy or sell. Ad valorem tax valuation is not to be considered as bearing on the market value as set by the tax authorities. However, the appraiser should note in his or her report any valuation by the owner whether for income, inheritance, or estate tax or for insurance purposes, whether or not the appraiser considers such valuation controlling upon his or her valuation.

5.80 ADAPTABILITY, SUBDIVISIONS

In arriving at an opinion of the fair market value of the property before and after the taking, the appraiser should consider the use or uses to which it was being put and to which it was naturally adapted. He or she should consider it in the light of its highest and best use, and this may not be the same use(s) before and after the taking. If the property, or any part of it, was naturally adapted or suitable for building sites or subdivision purposes, and if the appraiser should find that such adaptability enhanced the market value of the land, he or she may take it into consideration insofar as such adaptability affects its present market value. However, in the absence of a bona fide developed subdivision, it is not permissible to estimate the number of lots which might be cut from the tract or any part of it, nor is it permissible to estimate the amount for which each lot could be sold to arrive at an estimated value of the tract. Proposed or intended uses of the property are not to be considered as a basis for market value.

5.81 UNITY OF LANDS

In determining the unity of lands, the factors most generally emphasized are unity of ownership, physical unity, and unity of use. Under certain circumstances, the presence of all these unities is not essential; however, usually the unity of use is given greatest emphasis. The parcels claimed as a single tract must be owned by the same party or parties, but for unity of ownership, a party does not have to have the same quantity or quality of the interest or estate in all parts of the land. Where there are tenants in common, one or more of the tenants must own some interest and estate in the entire tract. The general rule is that parcels of land must be contiguous in order to constitute a single tract for possible severance damages and benefits.

It is generally held that parcels of land separated by an established city street and used by the public are separate and independent as a matter of law. Where land is unoccupied and is held for purposes of sale and building costs, a physical division by wrought roads and streets creates independent parcels as a matter of law. Mere paper division by lot or property line and undeveloped streets and alleys are not sufficient alone to destroy the unity of land.

The unifying use must be a present use - a mere intended use cannot be given any effect. Therefore, in a proposed subdivision which has merely been laid out on a map and for which there are no developed streets and alleys actually on the land, the parcel will be treated as one tract notwithstanding any division into imaginary lots.

Where the highway crosses an established subdivision where streets and alleys have actually been established on the ground by a physical act or where lots have been sold, and/or where lots are occupied by separate dwellings, the parcels are to be considered as separate properties. In such cases, lots and buildings adjoining the rear of lots and buildings abutting on the highway where the land taken are not to be valued as remaining property with that immediately affected. The Area Appraiser will normally advise the appraiser whether the area is to be considered as separate lots or as a unity so as to include the entire tract.

5.82 ZONING AS RELATED TO LEGAL GUIDE

In the appraisal of property, any existing zoning ordinance restricting the use of property is to be considered in determining the market value of the land being condemned, because in determining the market value of realty, all circumstances and conditions which become either an advantage or detriment to the property should be considered. If the land taken is not presently available for a particular use by reason of a zoning ordinance or other restriction imposed by law, but there is a reasonable probability of change in the near future in the zoning ordinance or other restriction, then the effect of such probability upon the market value may be taken into consideration in the appraisal. However, if the possible change in zoning ordinance restricting the use of the property condemned is purely speculative then such a possibility is not to be considered. All features of the zoning ordinance that have an effect on the before or after value of the property should be reported by the appraiser. In considering the possibility of a zoning change, the appraiser should interview people in the affected area, as well as city officials concerned with zoning problems, and note their opinion and attitude in the report.

5.83 BUSINESS PROFITS

In arriving at the amount of compensation due to owners of the property (difference in before and after values) the appraiser is not to take into consideration any loss of profits from a business conducted on the property or operated in connection therewith. Neither injury to a business, inconvenience; nor loss of profits is an appropriation or taking of property which must be paid for. The business located on the land may be considered only insofar as it enhances or detracts from the fair market value of the property. Where the property itself is producing income in the form of rent, this may be considered under the property capitalization approach in determining market value.

The appraiser is not to consider the expenses of removal or relocation of personal property in placing value on the real property taken. In cases of losses caused to a business by reason of a condemnation of a leasehold or of the land on which it is conducted, the appraiser is not to consider in his or her appraisal the removal cost of a stock of merchandise, or other personal property, or the breakage or other injury to such property caused by such removal from a leasehold or fee in land. Neither will he or she consider the expense of moving trade fixtures to another location nor shall he or she consider that moving a business to another location might result in the loss of business, customers, and good will. Neither shall the appraiser consider the loss of business resulting from the diversion of traffic. In summary, it is generally held that injury to a business is not an appropriation of property eligible for compensation.

Therefore, in making the appraisal, the appraiser will not use income or profits from a business conducted on the property in the Income approach, since evidence of income or profits derived from a business conducted on a property is too speculative, uncertain, and remote to be considered as a basis of ascertaining market value of property. Business profits depend on the capital investment, the skill in management of the owner, and other elements extrinsic to the property itself. However, if the property itself is an income producing property - that is having a fixed rental value, then the rental value may be taken into consideration as bearing upon the market value.

5.84 LEASEHOLD INTERESTS

Leaseholds generally are a matter to be resolved between the lessor and the lessee. Unless otherwise specified by the Area Appraiser, the appraiser shall consider each property as if free and clear of all liens and encumbrances. If called upon to appraise a leasehold interest, the appraisal procedure shall be in accordance with the General Legal Principles.

However, on those claims involving property which is leased to federal agencies, the leasehold interest shall be appraised and assigned a separate value in the approved appraisal. Please refer to NCDOT Right of Way Manual, **Section 10.24**.

The appraiser may also be asked to value the Leasehold interest where a Billboard is involved. The Area Appraiser will provide the appraiser with a determination prepared by the Area Negotiator stating whether the Leasehold interest is a factor.

5.85 MINERAL DEPOSITS AND TIMBER

When land containing mineral deposits and/or timber is acquired, the measure of compensation is the market value of the land including the minerals and/or

timber. These items cannot be valued as potential merchandise. Land sales of similar properties containing similar mineral deposits and/or stands of timber should be used to estimate the value of the subject property before and after the acquisition. Logical studies are sometimes necessary for supporting the estimated contributing value of timber and/ or mineral deposits.

5.86 TEMPORARY TAKINGS FOR BORROW OR MATERIAL PITS, HAUL ROAD AND DETOUR ROADS

Under [General Statutes 136-120](#), the Department of Transportation is authorized to enter upon lands and structures to make surveys, borings, soundings, or examinations as may be necessary in performing its duties. Such action shall not be deemed a taking. However, the landowner is entitled to damages as may result to the land as a result of such activities. Where an area is temporarily appropriated for the purpose of acquiring borrow material, the appraiser will consider this a permanent damage, and the measure of damages is the fair market value of the property immediately before and immediately after the injury. However, the taking of a borrow pit differs from the appropriation of a permanent easement in that the appraiser may consider in his after value the fact that the area will be returned or abandoned to the use of property owner. The appraiser should not value the material taken from the pit at so much a ton or yard.

In the case of haul roads or other temporary injuries of a similar nature, the measure of damages is the diminution in the rental or usable value of the property taken, together with such special damages by way of injury to crops, improvements, etc., and permanent injury to the remaining land. Therefore, as a general rule, the diminished market value of the property will not be used as a measure of damages for a temporary injury to real estate, but only when the injury to the realty is permanent. Therefore, in the case of a temporary taking, such as a haul road, where the plaintiff has been deprived of the use of the premises by reason of the injury thereto, he may recover the rental value for the time during which he was deprived of the use.

5.87 NON-COMPENSABLE DAMAGES

In the case of loss and diminution of access where the property appraised is being taken for a limited or controlled access project, the appraiser must first of all find out from the Area Appraiser what access rights the property owner will have to the project. The right of an abutting property owner to access (ingress and egress from and to an existing highway), is a property right in the nature of an easement appurtenant to the property. Where this right is totally extinguished and no substitute way of access is provided, it is a taking of real property right and in this event, the before value will be the fair market value of the property with access and the value after the taking will be the fair market

value of the property with the right of access eliminated. Where the highway is on new location or where additional right of way is taken, matters of access is merely another factor to consider in the before and after value. Where, however, an existing highway is converted to a controlled access facility and direct access to the main traveled lanes is denied but access is provided by service road to these lanes, there is no taking of access. Factors such as circuitry of route in reaching the main traveled lanes caused by the construction of the project and a diminution of the volume of public travel immediately in front of the premises are not items of legal damage. This is true also where an existing rural highway is, in effect, converted to a service road to serve the newly constructed main traveled lanes even though the property under investigation is left in a cul-de-sac by reason of a barricade placed at one end of the existing highway bounding the new construction.

Generally speaking, a landowner is not entitled against the public to unlimited access to this land at all points in boundary between his land and the highway, although entire access may not be cut off without compensation. If ingress and egress are not substantially interfered with, no compensation is allowed. There are also many other rules which the Department of Transportation may impose upon access to and use of the highways without payment of compensation. These include regulation of speed, parking, routing of traffic along one-way streets, channelization, and moderate regulations upon the number of types of driveways entering a highway from a specific property, i.e., minimum standards for commercial entrances adopted by ordinances of the Department of Transportation. Damages due to the exercise of the "police power" of the State are not compensable as they are not a taking of private property rights in the constitutional sense. The major distinguishing feature between the two is that "eminent domain" involves a taking of property while "police power" is concerned with the regulation of property to prevent a use detrimental to the public interest.

5.88 NON-COMPENSABLE DAMAGES - SUMMARY

There are many different types of damages that a landowner may suffer from the construction of a highway which are generally non-compensable by law. Therefore, these should not be considered by the appraiser in making his or her appraisal. Listed below are some of the non-compensable damages frequently encountered by the appraiser. This list is not intended to be all inclusive, and the appraiser should consult with the Area Appraiser when in doubt as to what items should be reflected in the appraisal. Items 1 through 5, while not items of legal damage, may be considered on the question of whether there are any benefits to the subject property arising from the construction of the project.

1. Decrease in traffic volume in front of the premises (which might be caused by moving the main traveled lanes away from a business or by a rerouting diversion of traffic or by one-way streets).

2. Circuitry of travel to achieve access to main traveled lanes or roads.
3. One-way street; median strips which prevent turning; fences; and trees and shrubbery erected or planted on the right of way by the Department of Transportation.
4. Lowering or raising the grade of an existing street or highway within the old right of way where access is not controlled.
5. Cul-de-sac which results when an existing rural highway is dead-ended.
6. Loss of use and occupation of the property caused by the construction of the project.
7. Personal annoyance due to interference with peaceful living conditions cause by traffic noise, fumes, and vibrations; however, the appraiser may consider the use to which the condemnor will put any portion of the subject property, but not other property obtained by the condemnor, in arriving at market value of the subject premises after the taking, in so far as concerns damage to the subject property.
8. Moving expenses including the expense of removal of or relocation of personal property and trade fixtures; breakage or other injury to such property caused by removal.
9. Loss of business, good will, or the interruption of business.
10. Anticipated losses from intended uses or purposes which the owner has in mind and all other speculative losses.

5.89 HIGHWAY EASEMENTS OUTSIDE THE RIGHT OF WAY

As noted in the **NCDOT Real Estate Appraisal Standards and Legal Principles**, "An easement denotes ownership of limited real property rights; thus, falling short of full fee simple estate ownership. When an easement or servitude over land is condemned for the public use, the appraisal should be in the amount of the difference between the fair market value of the land before and the fair market value immediately after imposition of the easement. Full consideration shall be given to a due allowance made for the substantial enjoyment and beneficial ownership remaining to the easement. "An easement outside the proposed right of way shall not be considered a fee simple taking. An easement is a partial taking of property rights. The degree of servitude controls the effect of easements. Compensation should not be greater than the adverse effect of the easement, or the difference in the fair market value of the property before the taking for the easement and the fair market value of the remainder subject to the easement. The appraiser and the Area appraiser must have a mutual understanding concerning the property rights affected by

the proposed easement before the assignment is made. There are instances where the taking for an easement, such as a slope easement, may result in benefits to the remainder.

5.90 EQUIPMENT AND MACHINERY

The appraiser, staff or fee, shall never be responsible for determining whether items of equipment are to be considered personal property or real property. This is a decision to be rendered by the Area Appraiser after reviewing the Inventory of Equipment provided by the Negotiating agent. The appraiser will be given [FRM5-L](#) and/or [FRM5-M](#), as needed, when the assignment is made. These forms indicate the decision of the Area Appraiser as to how the items will be treated within the appraisal report. The appraiser shall complete this form, placing a copy of same in each copy of the appraisal report. The total estimated contributing value in place shall be added to the estimated value of the other improvements. The appraisal report shall be written in such a manner that the value of any item(s) considered real property can be readily set out or separated from the total. Although equipment and machinery, or trade fixtures, are considered a part of the real property, separate ownership may be involved. If difficulties are encountered during performance of an appraisal assignment, the appraiser shall direct any inquiries to the Area Appraiser.

5.91 SPECIALIZED EQUIPMENT, MACHINERY, TRADE FIXTURES AND TIMBER

In the event an appraisal assignment necessitates the valuation of specialized equipment, machinery, trade fixtures, mineral deposits, or timber, the appraiser may, at his or her election, employ a specialist or consultant for assistance. However, the appraiser shall set forth any intention to hire a specialist or consultant and state the name on the Appraisal Fee Proposal, [FRM5-B](#). The Appraisal Fee Proposal shall contain the specialist's fee as part of the appraisal fee. The Department of Transportation is concerned only with the total appraiser fee. Caution: The appraiser shall correlate and analyze the specialist's opinion and estimate as part of the appraiser's own opinion and final estimate of value. The inclusion of any consultant's estimate by simply adding it to the appraiser's estimate, without explanation, shall render the report unacceptable. The specialist's or consultant's report shall be included in the Addenda of the appraisal report. Item (16) of the Appraisal Contract reads: "The DEPARTMENT and the Federal Highway Administration shall have the right to approve or reject any firm or individual that the APPRAISER may propose as a subcontractor or employee whose services will be employed in the preparation of the appraisals herein set out."

5.92 STAFF APPRAISAL ASSIGNMENT

The staff appraiser will receive his or her work assignment on [FRM5-N](#), Staff Appraisal Assignment. The provisions of an assignment set forth in this form shall be met as if it were a contract. The staff appraiser shall apply for any contract extension in writing whenever he/she is unable to meet the original terms of the assignment, for any reason. The appraisal of property owned by Department of Transportation employees shall not be assigned to staff appraisers but to independent fee appraisers.

5.93 OUTSIDE EMPLOYMENT - GENERAL

Employees of the Department of Transportation may accept outside employment to be performed in regular off-duty hours, but only where such employment involves no direct or indirect conflict of interest, and only where permission for such employment has been granted by the Department. Application for outside employment and permission by the Department shall be in writing. Form PO-102, provided for the purpose, shall contain the name of the secondary employer, the type of work to be performed by the employee, and the approximate number of weekly working hours, with the stipulation that the employee may not be called off the regular job during working hours for the performance of any outside work. The employee is to comply with the Secondary Employment Policy and Procedures memorandum. See Chapter 1 of this manual for additional information.

5.94 OUTSIDE EMPLOYMENT – APPRAISAL WORK BY STAFF APPRAISERS

Before accepting any outside employment assignment, the staff appraiser must ascertain that the property to be appraised will not be affected by any highway project at the present or in the foreseeable future. No employee of the Appraisal Section will be permitted to accept assignments from any other condemning authority or any individual or firm doing business with the Department of Transportation. It should be thoroughly understood between the appraiser and the person, firm, or corporation employing his or her services that the appraiser will **NOT** be required to testify in court by reason of the appraisal. Outside employment must not involve the use of any State-owned property of equipment. It is absolutely forbidden for a staff appraiser to work for any fee appraiser who performs appraisal work for the Department of Transportation.

5.95 PRELIMINARY PARCEL STUDY

The Preliminary Parcel Study, [FRM5-P](#), is used by the Area Appraiser as a record of the preliminary inspection of the property to be appraised. It serves to identify the property by a brief physical description of land and improvements to

include legal rights, effects of the highway taking, and a written study of the appraisal problem. The form is also a record for miscellaneous information, such as the need for equipment inventories, partial taking of building affidavits, estimates, and the appraisal premise.

The Area Appraiser uses this form as a record for estimating value of the entire property and damages or benefits resulting from the taking. Through the use of the Preliminary Parcel Study form, the Area Appraiser is in a position to further estimate the time required and fee range for preparing an appraisal assignment. The Area Appraiser prepares preliminary parcel studies as soon as right of way plans and appraisal requests are received that will be used in appraising the project.

5.96 PLANNING FOR ASSIGNMENT OF APPRAISALS

The Raleigh R/W Office furnishes each Area Appraiser a tentative schedule for future projects in his area. This schedule will indicate the approximate date the roadway plans will be completed and the anticipated date for letting the project to contract. Immediately upon receipt of notification that a project or projects are scheduled, the Area Appraiser should make a preliminary survey of the work to be done and the personnel that will be required to complete the project within the time allotted. The Area Appraiser would have already received authorization to spend funds on the project. At that time, the Area Appraiser has the option to secure a basic data report (a sales brochure) showing sales and listings of properties believed to compare favorably with parcels along the project. Prior to the receipt of the project schedule, the Area Appraiser should have received preliminary plans; completed a field inspection of the project with the Division Right of Way Agent. On those parcels estimated to be \$25,000 or less where no damages to the remainder are involved, the Division Right of Way Agent may prepare a Right of Way Claim Report. No request for an appraisal from the Negotiating Section will be necessary. This is an optional procedure previously decided during the field inspection of the project with the Division Right of Way Agent.

If, because of a shortage of appraisers or for any other reason, it appears that the schedule cannot be met, the State Appraiser should be notified at once. The project can then be assigned to another Area Appraiser or additional personnel can be made available, or the work can be rescheduled. Some items for consideration in the process of planning for and assigning appraisals include, but not necessarily limited to the following:

- (1) Location of available appraisers with respect to the project,
- (2) Qualifications and limitations of the appraisers,
- (3) Number and type of properties to be appraised and the time allotted for completion of the work.

It is preferable that appraisers be employed from the area in which a project is located. Local appraisers will be better known by the public, and their opinion of value will be more readily accepted by both the property owner and the jury. In addition, the local appraiser will be more familiar with the values in the area and should be able to complete the job in a shorter length of time than any outside appraiser. Less travel time is also required for the local appraiser, thereby, resulting in savings of time and money.

The qualifications of the available appraisers should be scrutinized carefully, to the end that the most capable and competent appraisers available are employed. Some appraisers specialize in or are more qualified by experience and training to appraise certain types of properties, and assignments should be made according to the appraiser's level of experience and education. Careful attention to the qualifications and limitations of each appraiser will result in the efficient overall operation. The number and type of properties to be appraised have a direct bearing on the number of appraisers required, as well as the time allotted for the completion of the project. In the case of a completely rural project, for example, the Area Appraiser should figure on employing appraisers specializing in or best suited for such work. The time element plays an important role in this phase of the work and, generally, the more parcels, and the shorter the time schedule, the greater number of appraisers should be assigned to the project. In the process of assigning appraisals, no distinction shall normally be made between the staff and fee appraisers, merely because of the fact that one is a full-time salaried employee of the Department of Transportation, and the other works on a fee basis. There are exceptions to the foregoing statement which will be dealt with in subsequent paragraphs.

The percentage of the appraisal workload shared by staff and fee appraisers depends directly upon the volume of parcels to be appraised. Although appraisal work is the chief function of staff personnel, they have other duties, such as making right of way estimates and doing market data research. The Right of Way Unit has established an on-the-job training program to maintain and increase proficiency and expertise of the staff appraiser.

In those cases where it appears necessary or desirable to use either a staff or fee appraiser from a territory normally covered by another Area Appraiser, this procedure should be cleared with both the State Appraiser and the other appropriated Area Appraiser. Prior approval must be obtained from the State Appraiser for the employment of appraisers from outside the State of North Carolina.

5.97 NUMBER OF APPRAISALS

Initially, only one appraisal will be obtained in cases of uncomplicated full takings or uncomplicated partial takings. Two appraisals may be obtained in any cases where the nature of the taking and the appraisal problems are complex. An appraisal made by one individual on alternate premises, as in the

case of service road situation, will be considered as one appraisal.

The number of appraisals for each parcel on Federal-Aid Projects in excess of the requirements set forth in the preceding paragraph will be obtained whenever the Federal Highway Administration has requested that the Department obtain additional appraisals. Additional appraisals may be obtained when condemnation is imminent or when the first appraisals show a wide divergence in value. In these situations, the Area Appraiser has reviewed the appraisal reports on hand, made his attempt to reconcile the divergences, and is of the opinion that the Department of Transportation is not in an adequate position to defend its estimate of value. The additional appraisal is obtained in an effort to support that appraisal report which is believed to more fairly represent the fair market value of the property.

5.98 PARTIAL TAKING OF BUILDING AFFIDAVIT

During the preliminary field study of the project, the Area Appraiser inspects all buildings which are located partially within the acquisition. The Area Appraiser secures the services of an independent fee appraiser who determines whether or not the economic value or utility of the building/structure will be destroyed. The Area Appraiser secures the Partial Taking of Building Affidavit, [FRM5-Q](#), prior to making the assignment. Accordingly, the appraiser rendering the appraisal report will know in advance of the assignment whether the severed structure is to be considered as totally taken.

5.99 ESTIMATES FOR COST OF CUTTING OFF BUILDINGS AT PROPOSED RIGHT OF WAY LINE

When it is necessary to estimate the cost of clearing the portion of a building from the proposed right of way as a result of cutting off the building, an estimate is made as follows:

- (1) The total cost for clearing the right of way and refacing the building is obtained.
- (2) The cost for cutting off the building at the proposed right of way line and clearing that portion of the building from the new right of way is obtained as a separate item.
- (3) The cost for shoring up the "cut-off" building and refacing same without including the cost as described in item (2) above is obtained.

The appraiser is to consider only item (3) in the appraisal report. The Area Appraiser furnishes the Division Right of Way Agent the estimate described in item (2) above.

5.100 RETENTION VALUE OF TIMBER

The value of timber on the usual parcel will not be determined separately but will be included in the land value. This will be accomplished by comparing the subject property with sales of similar properties having a similar stand of timber. In some cases, it may be necessary or advisable to make a determination of the value of the timber within the right of way separate from the land, in which case a current timber cruise should be secured. The timber cruise report is furnished the Area Appraiser for review and eventual placement in the public folder at the time the appraisal is approved. The Area Appraiser should write a cover letter explaining the reason for the timber cruise and how the timber cruise is incorporated in the appraisal report.

The "retention value of timber" may be defined as the value of the timber within the right of way as it stands. This value is not necessarily the same as its share of the total value of all the merchantable timber on the property. The retention value of timber only concerns all of that merchantable timber lying within the proposed right of way.

The ratio of logging cost to the value of the timber "on the stump" may be greater in a straight cutting as opposed to the ratio of logging cost and cutting of an entire tract. If the property owner is permitted to retain the timber inside the right of way, he should not be compelled to cut all of the merchantable timber on the tract. The timber cruiser must bear this factor in mind when estimating the value of the timber within the taking. The value of the timber within the right of way is to be deducted from the total appraised damages if the owner is permitted to retain and cut the timber himself.

This is not intended to imply that a timber cruise should be obtained on all parcels having merchantable timber thereon. In the case of a tract having a large amount of merchantable timber and/or where the owner has previously expressed a desire to retain the timber, a cruise should be ordered initially. If, during negotiations, the owner requests that he be allowed to retain the timber, the Negotiator will advise the Area Appraiser so that a cruise can be made.

Timber cruises of the entire tract are sometimes secured to assist the appraiser in rendering a more accurate appraisal report involving merchantable timber. The appraiser must compare the subject property with sales of similar properties having similar stands of timber-the unit of comparison usually being on an acreage basis. It is not proper appraisal practice to estimate the value of the land as though cut-over, and then add to this "value of cut-over woodland", the dollar amount reflected in the timber cruise. An appraisal report submitted to the Area Appraiser in this fashion is not acceptable. The responsibility for determining the necessity of obtaining a timber cruise shall rest with the Area Appraiser. In unusual cases, instructions and advice should be sought from the Central Office. In the event of lawsuits involving lands with merchantable timber, the advice of the Attorney General's office should be obtained.

5.101 APPRAISAL OF ADVERTISING SIGNS

Advertising signs may or may not be appraised depending upon whether each sign involved is considered personalty or realty. Outdoor advertising signs referred to as "Billboards" are, as a general rule, placed on the property of others by virtue of an agreement or lease. Reference is made to Section 9.01 for the procedure to follow in the disposition of billboards. The method of valuation for outdoor advertising signs being purchased under the [Federal Highway Beautification Act of 1965](#) and the **State Outdoor Advertising Control Act** is explained under **Section 17.05** of this manual. Signs not classified as billboards are usually on premise signs which are classified as realty or personalty depending on condition and as to whether the sign can be legally moved without substantial modification. Signs that can be moved are usually classified as personalty and not appraised. Signs that can't be moved are usually classified as realty and appraised.

Of the acceptable methods of appraising, the preferred method of valuing the fair market value of the sign structure is the cost approach or the "reproduction cost new less depreciation" approach. In the event the income approach to valuing a sign is deemed most appropriate for use in determining fair market value of a sign structure, only the reasonable net rental income attributable solely to that structure, with no consideration given for business operation expenses or income, should be capitalized. The method of valuing a sign using a gross income multiplier is not considered acceptable since it involves such items as business operation expenses and income, advertising contracts and revenues, and permits and licenses.

5.102 REVIEW OF APPRAISALS

All appraisals on each parcel to be acquired for right of way purposes must be reviewed. Each appraisal must be reviewed for mathematical accuracy, conformance with the **NCDOT Real Estate Standards and Legal Principles**, and soundness of reason and logic as related to fair market value. The nature and extent of this review will necessarily vary from parcel-to-parcel according to the individual situation. The Reviewing Appraiser is expected to fit the review to the particular project or property under consideration. The Department presently has an adequate number of appraisers with authority as reviewers - the State Appraiser in the Central Office, the five Area Appraisers, and currently two to five Reviewing Appraisers in each of the five field offices. Reviewing appraisers establish the amount of damages for negotiations by approving or adjusting appraisals. Reviewing Appraisers are selected from the most qualified appraisers within the organization. Properly qualified individuals from outside the organization may be employed to furnish advice and consultation in the review of unique properties. Certain minimum qualifications must be met in either case. An effort is made to select the most competent people with proven ability as appraisers, possessing sound judgment as to values, having a thorough knowledge of the fundamentals of appraising, and

those who possess a complete understanding of highway procedures and policies.

Consideration is also given to the administrative ability of the Area Appraiser since it is his responsibility to supervise the work of both fee and staff appraisers in this particular area of the state and to see that the work in his area progresses according to appraisal schedules. In the event that an Area Appraiser is not available, the most qualified Reviewing Appraiser may be selected on an "acting" basis until such time that he can meet the minimum qualifications, he may be appointed to the position permanently by the Manager of Right of Way Branch upon recommendation of the State Appraiser.

Reviewing procedures are consistent throughout the State. The Reviewing Appraiser studies the appraisal report in the office, checking the report for format and mathematics. He or she makes a field inspection of the property and all sales listed as comparable in the appraisal report. If the appraisal report, in the Reviewer's judgment, is representative of fair market value, it is approved, or recommended for approval, for use in negotiating settlement of the claim. If the report requires correction due to erroneous information, mathematical errors, poor appraisal practices, or poor judgment, a letter is written to the fee or staff appraiser setting forth the items adjudged to be in error. After correction by the appraiser the report is resubmitted electronically and labeled *Corrected Appraisal Report*, and the review is completed by the Reviewer.

The Reviewing Appraiser completes a Review Summary, [FRM 5-R](#), or a review letter, on each appraisal report secured for right of way acquisition. He or she sets out the reasoning in estimating fair market value of the property appraised as he or she approves or adjusts the appraisal report. The Reviewing Appraiser (Appraiser II) has the authority to approve appraisals to establish compensation not in excess of \$500,000 on all types of real property. All appraisals showing compensation in excess of the above limitations are reviewed and then forwarded to the Area Appraiser along with the Review Appraiser's recommendations. The Area Appraiser then conducts a review and handles accordingly. All appraisals showing compensation in excess of \$1,000,000 are referred to the State Appraiser for approval, along with the written recommendation of the Area Appraiser. Such appraisal reports are reviewed in the field by the Reviewing Appraiser with reviews conducted by the Area Appraiser and by the State Appraiser. The State Appraiser has the authority to approve, adjust, or reject any appraisal report secured for highway purposes.

Where unusual or complicated appraisal problems exist (either below or above the limits of authority for approval), the Reviewing Appraiser may refer such problems to a higher official if such action is deemed to be appropriate.

Upon breakdown of negotiations based on appraisal reports secured for acquisition purposes, or when condemnation proceedings are instituted on a

project, and upon the request of the State Right of Way Appraiser or of counsel, additional appraisals may be obtained for further study or for trial purposes. The Appraisals may be less documented for evidential purposes. They are obtained by the Area Appraiser in the usual manner upon receipt of a written request from the State Appraiser. The same review procedures as outlined above are performed with these appraisal reports. They are forwarded to the State Appraiser with a written letter of review, which outlines the Reviewing Appraiser's opinion of fair market value as related to the additional appraisals. Based upon additional value information, any time prior to settlement, the Reviewing Appraiser may adjust his estimate of damages. Those appraisal reports secured specifically for condemnation proceedings are forwarded to the Trial Attorney assigned by the Attorney General's office to handle the case. Assistance is given by all Reviewing Appraisers when requested by the staff of the Attorney General's office in their preparation for the trial of condemnation cases.

5.103 REVIEW CERTIFICATION

After appraisals have been reviewed the Reviewing Appraiser prepares [FRM5-S](#), Review Certification and Allocation of Damages, with his or her signature and seal affixed, converts it to PDF. The approved appraisal is also converted to PDF. If the remainder, or any portion thereof, is considered an uneconomic remnant by the Reviewing Appraiser, he or she will so indicate by stating yes to the question "uneconomic remnant factor" which appears under the date of the certification. If more than one remainder exists the review appraiser should specify which remainder(s) are classified as uneconomic.

5.104 DISTRIBUTION OF APPRAISALS

Approved Appraisals with Review Certifications and Review Summary or Review Letters are then placed in the proper project file in the public folder on the shared drive (S drive). A transmittal is prepared and emailed to the State Appraiser and Area Appraiser, with copies to the appropriate Division Agent, Area Negotiator, and Attorney if applicable, notifying all parties that the approved appraisal and supporting review documentation is available on the shared drive. The Right of Way Agent should not have access to any unapproved appraisals. Copies of the approved appraisal and all unapproved appraisals are retained by each appraisal office.

Upon notification by the Division Right of Way Agent that the claim has been CLOSED, the Area Appraisal office will destroy all paper records of the claim while retaining electronic data as previously stored.

5.105 COOPERATION WITH NEGOTIATORS IN EXPLAINING APPRAISALS

In most cases, if the appraisal report is properly written, the negotiator should be able to read and understand the report without assistance from the appraiser. In those instances where questions arise about the appraisal, the Area Appraiser will be expected to take whatever action appears appropriate to clarify the negotiator's questions. This action might take the form of verbal explanation, further review of the appraisals, additional appraisals, etc. The request for assistance is handled through the Area Negotiator.

In unusual cases, it may be advisable for the Area Appraiser to arrange a conference with the negotiator at the time he turns the appraisal over for negotiation. Such a conference might be for the purpose of explaining something unusual about the appraisal or something that might be of particular benefit during negotiations.

5.106 REEVALUATION OF APPRAISALS BASED ON NEGOTIATION DEVELOPMENTS

Occasionally, during the negotiation phase, circumstances will be brought to light which will warrant revision or further study of all or some of the appraisals. Such circumstances might consist of additional sales not known to the appraiser, incorrect property lines or other basic information, changes in zoning, etc. In such instances, the Area Appraiser will be expected to take whatever action is required to put the appraisals on the proper basis. In some cases, a very low settlement ratio may be sufficient grounds for further review of the appraisals or ordering additional appraisals.

5.107 REEVALUATION OF APPRAISALS AND SECURING APPRAISALS FOR FURTHER STUDY

If negotiations based upon the approved appraisal are unsuccessful, the Assistant State Negotiator may request a further study of appraisal reports. This request is channeled through the office of the State Appraiser who advises the Area Appraiser to further study the existing appraisals, make a reevaluation, or secure additional appraisal(s). The Area Appraiser has the authority to secure an additional appraisal, or appraisals, if deemed necessary. At this phase it is not essential to secure the narrative type report based step-by-step on the [NCDOT Real Estate Appraisal Standards and Legal Principles](#). It is imperative that local appraisers (if available) be employed since this phase is a step toward preparation for condemnation, if necessary. Generally, the Area Appraiser will be given a completion date for such assignments and upon completion, these appraisal reports are reviewed. If an adjustment of an existing appraisal or if an additional appraisal for further study represents the fair market value of the property before and after the taking the

original approval is superseded and voided by the Reviewing Appraiser. Upon approval of the further study appraisal it is to be placed in the proper project file in the public folder on the shared drive (S drive) along with all supporting review documentation. A transmittal is once again prepared and emailed to the State Appraiser and Area Appraiser with copies to the appropriate Division Agent and Area Negotiator notifying all parties that the approved appraisal and supporting review documentation is available on the shared drive.

5.108 REEVALUATION OF APPRAISALS DURING CONDEMNATION PHASE SECURING ADDITIONAL APPRAISALS FOR COURT PURPOSES

Immediately after a Declaration of Taking and Complaint is filed, the Area Appraiser will promptly request those appraisers who have previously appraised the subject properties to re-inspect those properties in order that their evaluation date will coincide with the date of taking, and to revise their reports, if in their judgment, there is a significant time lapse or a physical or economic change since the date of appraisal.

If the Area Appraiser is of the opinion that additional appraisals are necessary, he is to proceed immediately to obtain such appraisals from local appraisers. The appraisal reports are reviewed and a review letter is prepared recommending or approving an appraisal and voiding and superseding the prior recommended appraisals. The review letter should show the number of appraisals reviewed, the name of the appraiser and date of the appraisals, the before values, the after values, the difference between the before and after values and the date each appraisal was approved. The same process for handling acquisition appraisals is followed. All proper parties as well as the Attorney General's Office are then notified via email of the transmittal.

This procedure constitutes sufficient notice to the Area Appraiser to have the required appraisals made prior to any buildings being demolished or prior to any work being done on the property. The Area Appraiser is also advised when the property owner files an answer. It will frequently be necessary to revise or obtain new appraisals during the condemnation phase due to changes in areas disclosed by the property survey map or changes in the legal basis upon which the appraisal is made. If such changes render a significant difference for the basis upon which the values are reported by the appraisers, then revised appraisals must be secured as early as possible. At times, such revisions may result in settlement of the claim.

5.109 PRE-TRIAL CONFERENCE AND COURT TRIAL

The Area Appraiser is expected to work closely with the Trial Attorney with

respect to the selection and employment of the witnesses necessary to properly present the case. Normally, the witness will be employed by the Area Appraiser and such services covered by contract in the usual manner. The determination of who to employ, how many witness will be required, and the basis upon which the appraisal is to be made is generally the responsibility of the Trial Attorney with the support of the Area Appraiser.

The Area Appraiser assists the Trial Attorney in pre-trial conferences and, in unusual cases, may even attend the actual trial, if requested to do so by the Trial Attorney. Actual attendance in court should be held to a minimum because of the volume of other work and should only be at the request of Trial Attorney.

5.110 RIGHT OF WAY ESTIMATES FOR PROGRAMMING LOCATION, DESIGN, AND UPDATING THE TRANSPORTATION IMPROVEMENT PROGRAM

Frequently the Area Appraiser is asked to prepare right of way cost estimates for various purposes. The estimates should be made either by or under the supervision of the Area Appraiser. Senior Staff Appraisers, Reviewing Appraisers or Area Appraisers are those who will generally make the right of way cost estimates. Specific instructions regarding the work to be done are furnished to the Area Appraiser along with the request for the estimate.

All requests for right of way cost estimates are referred to a staff assistant of the Administrative Section of the Right of Way Unit, who is responsible for the coordination of right of way estimates to include right of way costs, relocation costs (houses, businesses, graves), utility costs and acquisition costs (appraisal), negotiations, legal, etc.)

The right of way cost estimates are submitted to the Raleigh Office on a form entitled **REQUEST FOR R/W COST ESTIMATE** which identifies the project and gives the estimated number of residential relocatees, business relocatees, costs of land and damages, as well as the estimated total number of claims. Figures for utility costs, relocation costs and acquisition costs will be added in the Raleigh Central Office. The form is designed for recording the cost estimate in specific sections or premises. The project description and special instructions are also recorded on the form. It is imperative that the estimate show the type of plans furnished for its preparation.

Obviously, the accuracy of the estimate is directly related to the details of the available design data. All prior estimates of land and damages with the dates of those estimates should be given. This information is given in order that an explanation may be given for the increases or decreases and the cost figure of the current estimate as related to prior estimates. The explanation should be complete and detailed. Simple statements such as time adjustment, market is

increasing, or more sophisticated design data are not sufficient explanation. Each right of way estimate is a total of the estimated damages to each parcel on the project.

The advantages of the parcel-by-parcel method of estimating right of way costs are twofold: the estimated number of parcels involved by the project can be given, and separate estimates can be given for sections of the project.

Right of way cost estimates are prepared for the Transportation Improvement Program. The estimates are updated upon request by the Raleigh Central Office for the purpose of giving the estimated right of way cost for projects included in the TIP that are expected to be scheduled during a nine-year period. The estimates reflect the amounts expected to be expended on those projects listed in the TIP.

These estimates are based on the most recent design data which will vary from completed right of way plans to simply a line on a county map. Where sufficient data is not available to render an accurate estimate, it will be necessary to obtain at least a typical section of the project and copies of the tax maps relating to the location of the project. The estimator must have a concept of the effects of the project on the individual parcels included in the estimate. On those requests for right of way estimates for the TIP where right of way has already been completed, the estimator will so indicate by stating on the request "this project is completed", and return the request to the Central Office.

All estimates for the Transportation Improvement Program are to be coordinated through a Staff Assistant of the Administrative Section of the Right of Way Unit in the Raleigh Office.

5.111 JUSTIFICATION OF SERVICE ROADS BY SERVICE ROAD ECONOMIC STUDY

As soon as possible and upon receipt of plans for a project, the Area Appraiser should make a preliminary field inspection of the project together with the Area Negotiator and/or Division Right of Way Agent to determine where service roads may be required in order to mitigate property damages. It is imperative that this be done promptly so that sufficient time will be allowed for the preparation of the plans, estimates, and appraisals necessary to determine what service roads are justified economically. Obvious service roads not requiring an economic study should already be included on the highway plans.

5.112 CLOSURE ROADS

A closure road is a section of road that is constructed for the purpose of restoring the circulation of traffic to an existing road that would otherwise be

severed by the project. Justification for the construction of closure roads will be based on traffic needs and seldom will be a matter of determination by the Appraisal Section.

5.113 SERVICE ROADS JUSTIFIED BY ESTIMATES

Upon receipt of preliminary plans on controlled access projects, a field inspection is made by the Division Right of Way Agent and the Area Appraiser for the purpose, among others, of preparing a preliminary service road study. The field inspection will reveal certain instances where the necessity for service road will be obvious from an economic standpoint and are not shown on the preliminary plans. In all such cases, the Area Appraiser should immediately forward a report to the State Appraiser requesting that preliminary service road design(s) and construction estimate(s) be prepared so that further consideration may be given to the possibility of including the service road(s) in the roadway plans. The study gives a brief description of those parcels affected. Where a saving in right of way costs is believed to exist, a description of the proposed locations of each service road between approximate survey stations right and left is given. These proposed locations are plotted roughly on a section of the plans or cutout of the strip map.

The State Appraiser obtains from the Roadway Design Engineer the construction cost estimates and sketches (or minimum designs) which adequately show the locations of the proposed service roads and the area necessary for the additional right of way. The sketches are then forwarded to the Area Appraiser for his use in rendering a right of way cost estimate for each service road. The areas for the location of the service road right of way are computed from the sketches, and the estimates are made on a parcel-by-parcel basis setting out the unit values of all properties affected by using the Service Road Study - Parcel Worksheet, [FRM5-U](#). The estimates show the right of way costs for each affected parcel with and without the service road. It sets out the value of the part taken and damages to remainder. The savings in right of way cost is the difference between the estimated before and after values of each parcel-with and without the service road as designed. The Area Appraiser must have available sufficient market data to support his estimates. The service road study estimate is then forwarded to the State Appraiser who computes the net saving by subtracting the estimated construction cost from the estimated saving in right of way cost for each road.

The State Appraiser then submits the service road study prepared by the Area Appraiser with a cover letter showing the net saving that will be realized by construction of the proposed service road directly to the Roadway Design Engineer, with the recommendation that the service roads be approved and included in the roadway plans for the project if justified economically.

In those cases where the construction estimate exceeds the saving in right of way cost, no further consideration based on right of way estimates is given for

constructing a service road since the service road was not justified economically.

5.114 SERVICE ROADS JUSTIFIED BY APPRAISALS

Where a preliminary field inspection indicates the advisability of giving consideration to the construction of service roads whenever the justification is not obvious, the procedure shall be precisely the same, except that appraisals will be made on different premises for each parcel with and without service road, instead of using estimates.

Chapter 6 TITLE INVESTIGATIONS

6.01 CERTIFICATES OF TITLE - WHERE REQUIRED

Certificates of title shall be obtained in all of the following instances:

1. Where the total consideration to be paid, or donated, for any acquisition or claim reflects damages in the amount of \$25,000.00 or more. This includes building moving costs, whether paid to the owner or to a contractor by the Department.
2. On all total acquisitions where fee simple title is to be taken, whether by purchase or by donation and on partial acquisition where a significant portion of the value of the total property is acquired.
3. On all acquisitions for right of way exceeding \$25,000.00 for interstate and other controlled access projects.
4. On all acquisitions reaching condemnation status.
5. On acquisitions amounting to less than \$25,000.00 where the Right of Way Agent has reason to believe that one or more of the following conditions exist:
 - (a) there is some irregularity in title;
 - (b) there is a question of ownership;
 - (c) it is necessary to determine accurately the location of property lines;
 - (d) where the acquisition represents the greater part of the value of the entire property and there may be outstanding liens and encumbrances against the property.
6. For all leases of material pits involving a consideration of \$25,000.00 or more.

On all claims, the Right of Way Agent should carefully question property owners during his/her initial contact with them about their ownership of the property and the existence of leases, deeds of trust, mortgages, etc. In addition, the Agent shall verify the ownership and conditions of ownership through an investigation of the title from the courthouse records especially on those claims of less than \$25,000 where no certificate of title may be secured. Records in the Register of Deeds Office and the Office of the Clerk of Court should be searched to confirm ownership of the land and to establish if any mortgages, deeds of trusts,

bankruptcy proceedings, judgments, tax liens, civil actions or other liens affect the property from which right of way is being acquired. [FRM4-H](#) shall be completely filled out to assist in the preparation of a Preliminary Report of Title by an abstracting attorney.

On those claims where a certificate of title will not be secured, [FRM4-H](#) as completed by the Right of Way Agent, will serve as a title abstract for the property involved.

6.02 CERTIFICATES OF TITLE - FROM WHOM AND HOW OBTAINED

PARCELS ON DESIGN BUILD PROJECTS

For parcels acquired on Design Build projects, the Right of Way Consultant employed by the Design Build Firm is responsible for obtaining all title certificates, required title updates, deed and/or release preparation, and attorney closings in accordance with Section 6.01 above. The Consultant will select their own attorney, determine which parcels need titles/attorney closings, and pay the attorney's fees. The attorney's fees are part of the consultant's contract and the attorney will not be paid separately through the Right of Way Unit. The Consultant and their Attorney will utilize the Department's forms as much as is practical.

PARCELS ASSIGNED TO A CONSULTANT (EXCEPT ON DESIGN BUILD)

For Parcels assigned to a Right of Way Consultant through the Right of Way Unit (On-call or bid process), the Right of Way Consultant is responsible for obtaining all title certificates, required title updates, deed and/or release preparation, and attorney closings in accordance with Section 6.01 above. The Consultant will select their own attorney, determine which parcels need titles/attorney closings, and pay the attorney's fees. The attorney's fees are part of the consultant's contract and the attorney will not be paid separately through the Right of Way Unit. The Consultant and their Attorney will utilize the Department's forms as much as is practical.

PARCELS ASSIGNED TO DOT STAFF

For Parcels assigned to NCDOT Staff, the following procedures will be utilized:

The Staff Right of Way Agent is responsible for obtaining all title certificates, required title updates, deed and/or release preparation, and attorney closings in accordance with Section 6.01 above.

The Division Right of Way Agent will determine the specific attorney to be utilized for title/closing services for each parcel. It is recommended that the Division Right of Way Agent first contact the attorney, to determine if the attorney can meet the specified due date. After the attorney is selected, the Right of Way Agent will provide a completed [FRM6B](#) and [FRM4-H](#) to the Division Right of Way Agent and the Division Right of Way Agent will transmit the forms to the selected attorney. The [FRM6-B](#) and [FRM4-H](#) shall be saved on the S (groups drive) in the division/tip/county/parcel/requests folder.

The titles shall be requested promptly in order to meet acquisition schedules. If there are parcels in different ownership which come from the same parent or common tract or if there are other unique characteristics, it is recommended to assign all parcels to the same attorney.

The Division Right of Way Office will maintain a log of the due dates of the requests and will advise the Project Agent & Division Right of Way Agent when a title opinion has not been received on the due date. The Project Agent will promptly check with the abstracting attorney to determine the cause of the delay. In the event the abstracting attorney should have trouble identifying a property or have any other difficulties in regard to the title opinion, the Agent should furnish such assistance as may be needed. In some instances, the Agent may be requested by the Raleigh Office to instruct a local attorney to handle a special proceeding where minors or incompetents are involved in the settlement of a claim. This should only be done on instructions from the Raleigh office.

When the Agent experiences difficulties or delays in securing the title opinions by the dates needed, he/she should first enlist the help of the Division Right of Way or Area Negotiator in obtaining the title opinions. Title assignments should be carefully monitored and should not hold up the processing of final reports. If the project schedule will be jeopardized by a delayed title and it is apparent from contacts with the abstracting attorney that the title opinion is not forthcoming, the Division Right of Way Agent may reassign the title opinion to another attorney in order to maintain the project schedule. The original attorney should be notified in writing of the reassignment.

Any requests for legal opinions from the Attorney General's Office regarding information furnished in the title opinions shall be directed to the State Negotiator or Assistant State Negotiator for referral to the Attorney General's Office.

In the event a claim is settled prior to a title opinion being assigned or received by the Division Right of Way Agent on claims less than \$25,000, the request for the title opinion may be canceled to prevent an unnecessary expenditure. Any cancellation should be from the Division Right of Way Agent to the abstracting attorney in writing. The abstracting attorney would be entitled to payment for any work or services performed up to that point, if any, and should be advised accordingly. If the certificate of title has been completed or is near completion,

the abstracting attorney should submit the certificate of title since full payment of services would be expected. He/she then could be advised in writing that no further services such as closing would be needed and a bill for services completed should be submitted.

6.03 FORM OF CERTIFICATE

The Division Right of Way Agent will supply the abstracting attorney with his letter of assignment ([FRM6-B](#)) and one copy of the preliminary certificate form ([FRM6-C](#)).

The completed [FRM6-C](#) is to be furnished to the Division Right of Way Agent by the abstracting attorney. The [FRM6-C](#) should be logged in, and given to the Right of Way Agent. The Agent should examine it for completeness, particularly as to the names and addresses (no post office boxes, only street addresses) to be shown on page 4 of the form. Should the abstracting attorney have difficulty in providing these names and addresses, the Agent should give his full assistance in this respect, since lack of this information could cause considerable delay and cost in filing condemnations by necessitating the service of summons by publication. The agent should carefully examine the certificate to satisfy himself that the property described in the certificate fully covers the property involved in the specific parcel for which the title certificate was requested. Where trustees for an institution are shown in a certificate of title, the Agent should check with the institution to determine if any changes have been made in this respect. If correct, [FRM6-C](#) is to be placed into the S (groups) drive final report folder for the particular parcel.

For claims in condemnation, Preliminary Title Reports should be not older than 4 months. If the report is older than four months, it will be necessary for the Right of Way Agent to obtain an update from the attorney. The update may be in the form of a letter from the attorney and it may be attached to the front of the original [FRM6-C](#). If the claim is settled, and the report is older than 4 months, it is not necessary to obtain an update since the attorney will update at closing prior to recording.

6.04 FINAL CERTIFICATE

A Final opinion of title is required on all condemned claims and all claims closed

by the abstracting attorney. When a claim is to be closed by the attorney, the Division Right of Way Agent will include [FRM6-D](#) with the instruments, warrants, and other documents. One copy of the completed [FRM6-D](#) will be returned to the Right of Way Agent upon closure of the claim by the attorney. In the event a condemnation suit is instituted, the Deputy Attorney General may request the final certificate. In those cases where an acquisition was eliminated after delivery of the preliminary certificate or where the final certificate is expressly waived by the Division Right of Way Agent, no final certificate will be required.

6.05 PAYMENT FOR TITLE SERVICES

The abstracting attorney will be instructed by the Division Right of Way Agent to submit to the Division Right of Way Agent along with each preliminary title certificate, an itemized statement for services rendered ([FRM6-E](#)). The statement for services rendered should be reviewed and approved by the Division Right of Way Agent, and then transmitted to the Raleigh Right of Way Office for payment. The approved [FRM6-E](#) should also be placed in the s (groups) drive in the closing folder.

If additional work is performed, such as title updates, closings, copy work, a second statement may be transmitted to the Raleigh Right of Way Office for payment. However, it is permissible to submit one statement covering all services, once the transaction is closed.

Under no circumstances should the Agent negotiate with the attorney as to the amount of his fee, as this is solely the prerogative of the Division Right of Way Agent.

6.06 MOBILE HOMES CONSIDERED AS REALTY - TITLE

It may be necessary to consider a mobile home as realty in connection with a right of way claim. An example would be a mobile home where the wheels and axles are removed, and the mobile home is placed on a substantial permanent type foundation or a mobile home with frame room additions. The Area Appraiser, Division Right of Way Agent and the Area Negotiator should carefully examine a mobile home of this nature and when they jointly decide that same should be considered as realty, the Negotiator should immediately make the initial contact and request the appraisal. At the same time, the State Negotiator should be notified, in writing, by the Division Right of Way Agent so that the title registration for the mobile home can be checked with the Department of Motor Vehicles in Raleigh to ascertain that the title has been registered in North

Carolina for a period of at least four months and as to whether any outstanding liens or encumbrances appear on the title. The Division Right of Way Agent should furnish the State Negotiator the vehicle registration number or numbers which will appear on the tongue or frame of the mobile home. Doublewide mobile homes will have two vehicle registration numbers, one on each frame or tongue. When the Negotiator submits the Appraisal Summary Sheet to the Area Appraiser, it should be noted under 'Improvements Taken' that the mobile home is to be considered as realty. The information that a mobile home should be considered as realty is also to be contained in the letter to the Deputy Attorney General at the time a Preliminary Certificate of Title is requested. This is necessary so the title attorney can adequately search for all liens and encumbrances. Appraisal requests are to be submitted in accordance with **Chapter 4** of the Right of Way Manual and the purchase of mobile homes considered as realty is also discussed in **Chapter 14** of the Right of Way Manual. A good reference in understanding titles to mobile homes is "Real Estate Bulletin" - Volume 23 - #3, Fall 1992. Copies can be obtained through the [North Carolina Real Estate Commission](#).

Chapter 7 INSTRUMENTS OF CONVEYANCE

7.01 PREPARATION OF INSTRUMENTS OF CONVEYANCE

All right of way acquisitions are to be conveyed to the Department of Transportation by use of instruments in accordance with the following paragraphs of this section.

7.02 DEED AND EASEMENT FORMS

All instruments of conveyance should be prepared by the Right of Way Agent who is negotiating project claims with property owners. Other agents may assist in this task. The instruments, with the exception of entering the amount of the consideration, are to be prepared prior to the offer of just compensation to property owners. **North Carolina Statutes authorize Right of Way Agents, as employees of the Department of Transportation, to draw or draft instruments of conveyance on behalf of the Department. The preparer shall type or sign the instrument, at the top of the first page, on the line designated. Persons, other than attorneys, who are not employees of the Department of Transportation cannot legally draft or prepare instruments of conveyance on behalf of the Department. The typed name or signature of the agent or person checking for accuracy and completeness should also be shown on the designated line at the top of the first page.** The amount of the consideration will be inserted in the instrument once a settlement is reached. Secondary road right of way agreements will be checked by the Division Right of Way Agent or the Senior Right of Way Agent. Signatures should be penned in black ink. Care must be taken to insure the instruments are neat and accurate.

[G.S. 161-14.2](#) requires that the name(s) of the signing parties be typed or printed legibly beneath their signature on instruments or documents filed with the Register of Deeds and the names in the instrument's heading must match the names notarized and typed underneath the signature. As these instruments constitute a public transaction, the full consideration should be recited in the instrument, rather than reporting the consideration to be "Ten Dollars and other Valuable Considerations" as contained in many non-departmental transactions. If the grantor refuses to execute an instrument reciting the full consideration, it is permissible to defer to their request and use such a phrase rather than jeopardize a settlement.

[G.S. 47-2](#) requires that all right of way deeds, easements, and other instruments of conveyance be duly recorded. Appropriate notary forms must be inserted on the instrument. See Chapter 8 and Chapter 8 Forms, for the various examples of executing and notarizing instruments.

While the department has a specific form for each type of area being acquired, it is preferred to combine areas into a single instrument where possible. This practice will save recording costs and simplify the settlement and closing process – See the [clauses](#) in the Chapter 7 Forms for examples.

Generally, if permanent right of way and/or control of access are being acquired, that instrument will be used and any other needed easements and their [clauses](#) will be added to the instrument.

If only a temporary easement is being acquired, that instrument will be used.

If **no** permanent right of way and/or control of access is being acquired, but some combination of permanent easements and temporary easements are being acquired, the Agent should select one of the permanent easement instruments to use, and add any other needed permanent or temporary easements and their [clauses](#) to the instrument. If there are multiple areas of the same type of easement, each area should be named and only one clause at the end of the areas is needed. For example, say a permanent right of way, 2 separate permanent drainage easements and a Drainage/Utility Easement are being acquired on one parcel. Then [FRM7-A](#) would be used with the r/w described on page one and the two pde areas and the due would be placed following the paragraph "IN ADDITION" as follows:

Permanent Drainage Easement – Area 1
(description)

Permanent Drainage Easement – Area 2
(description)

PDE clause

Drainage/Utility Easement
(description)

DUE clause

On the plans, NO temporary easement should be within a permanent easement or permanent right of way. And, all permanent easement forms are set up so that they allow for slopes within the permanent easement.

In situations where a permanent drainage easement and an Aerial utility Easement or Permanent Utility Easement overlap each other on the plans, the plans should be revised to covert the overlapping area to a Drainage/Utility Easement (DUE).

When describing an area, a Cadd generated metes and bounds description is preferred. Description may also be crafted using stations and distances shown on the project plans. In some cases, temporary easement descriptions may be crafted using a maximum width as described below in Section 7.10. However, the maximum width method may not be used to describe right of way or permanent easements.

The following instruments of conveyance forms shall be appropriately used in right of way transactions:

7.03 [FRM7-A](#) (Fee Simple Right of Way with No C/A)

[FRM7-A](#) is a Fee Simple Deed to be used to acquire right of way not subject to any Control of Access. The right of way being acquired should be described; preferably using Cadd generated description supplied by the Cadd Unit.

If easement areas are being acquired in addition to fee simple right of way, descriptions for these easement areas, such as permanent or temporary drainage easements, temporary construction easements, and Utility easements are to be placed following the paragraph "IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests:" The name of the easement should be followed by the cadd description and appropriate easement clause – see examples below. All [clauses](#) are located in the Chapter 7 forms.

If no easements are being acquired, the notation of 'None' or 'N/A' should be placed in the "IN ADDITION..." paragraph.

Special and/or limiting provisions, such as driveway [clauses](#), distribution of consideration being paid, etc. shall be placed in the "SPECIAL PROVISIONS:" paragraph.

7.04 FRM7-B (All ACQUISITIONS OF C/A BY DEED)

FRM7-B

is a Fee Simple Deed to be used on all parcels that are subject to any type of Control of Access. The right of way being acquired should be described; preferably using a Cadd generated description supplied by the Cadd Unit. If no right of way is being acquired, but control of access is being imposed, the following clause should be placed where the description would typically go:

No physical area is being acquired. Access is controlled by the Department of Transportation as is indicated by control-of-access C/A lines on the Master Plans for Department of Transportation Project _____, WBS# _____, _____ County, on file in the Right of Way Branch of the Department of Transportation in Raleigh, and which are or will be recorded in the Register of Deeds of _____ County, and there will be no access to, from or across the control-of-access (C/A) lines to the main traffic lanes, ramps, or approaches from property abutting said highway right of way unless provided below.

If easement areas are being acquired in addition to fee simple right of way, descriptions for these easement areas, such as permanent or temporary drainage easements, temporary construction easements, and Utility easements are to be placed following the paragraph "IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests:" The name of the easement should be followed by the cadd description and appropriate easement clause – see examples below. All clauses are located in the Chapter 7 forms.

If no easements are being acquired, the notation of 'None' or 'N/A' should be placed in the "IN ADDITION..." paragraph.

Special and/or limiting provisions, such as driveway clauses, distribution of consideration being paid, etc. shall be placed in the "SPECIAL PROVISIONS:" paragraph.

In order to delineate the appropriate means of access control, one of the following provisions must be inserted in the access control paragraph in the deed form:

1. Full Control of Access - Insert "*No means of access to the project is provided.*"
2. Access by service road or frontage road - Insert "*By means of a service frontage road which is designated _____ on said plans and is located between Survey Station _____ and Survey Station _____*"

_____ on Survey Line _____.”

3. Access by specific access point - Insert “*By means of a specific access point* _____ feet in width which is located (left/right) of and between Survey Station _____ and Survey Station _____ on Survey Line _____.”
4. Access on Y Lines - Insert “*By means of a local traffic road which is designated as* (identify - SR No., NC or US Highway No., or city street) which is located (left/right) of and between Survey Station _____ and Survey Station _____ on Survey Line _____.”

The foregoing provisions may not suffice in every instance i.e., if more than one access point or survey line is involved the provisions would have to be revised accordingly. The Agent should follow the format set forth in these provisions as closely as possible when modifications are made and must insure that access points are properly identified. In addition, there may be some situations where further clarification in the instrument of the areas subject to control of access and access points is needed. The Agent should seek assistance from the Division R/W Agent in these situations.

If a local road or street that provided access to property in the before condition, especially one which might adjoin or is adjacent to a property line, is being dead-ended at the C/A line, a statement should be inserted stating that the road or street is being dead-ended and there will be no access to the project by virtue of the Control of Access line.

7.05 [FRM7-C](#) (PERMANENT EASEMENT FOR RIGHT OF WAY) [FRM7-CA](#) (PERMANENT EASEMENT FOR RIGHT OF WAY WITH CONTROL OF ACCESS)

The Department does not want to take title either by negotiated settlement or condemnation to any property which may present an environmental concern without first making an investigation. In some instances where the Agent is authorized to proceed with settlement on a parcel where the incidence of contamination is questionable, the Agent should use [FRM7-c](#) or [FRM7-CA](#) in place of the Fee Simple Deed.

[FRM7-C](#) grants a permanent easement for right of way and will be used only in rare instances and for special situations. **Due to special rules regarding abandonment of right of way originally acquired by easement, this form**

should not be used without management approval. One approved use of [FRM7-C](#) is to acquire right of way that is contaminated. The Agent should include in the final report, a copy of the memo from the DOT Geotech Unit recommending acquisition by permanent easement. It is only used on parcels not subject to Control of Access. The right of way being acquired should be described; preferably using a Cadd generated description supplied by the Cadd Unit.

[FRM7-CA](#) - If for some reason it is decided that easement title is to be acquired and Control of Access will be involved, [FRM7-CA](#) is to be used. In order to delineate the appropriate means of access control, one of the following provisions must be inserted in the access control paragraph in the deed form:

1. Full Control of Access - Insert “*No means of access to the project is provided.*”
2. Access by service road or frontage road - Insert “*By means of a service frontage road which is designated _____ on said plans and is located between Survey Station _____ and Survey Station _____ on Survey Line _____.*”
3. Access by specific access point - Insert “*By means of a specific access point _____ feet in width which is located (left/right) of and between Survey Station _____ and Survey Station _____ on Survey Line _____.*”
4. Access on Y Lines - Insert “*By means of a local traffic road which is designated as (identify - SR No., NC or US Highway No., or city street) which is located (left/right) of and between Survey Station _____ and Survey Station _____ on Survey Line _____.*”

The foregoing provisions may not suffice in every instance i.e., if more than one access point or survey line is involved the provisions would have to be revised accordingly. The Agent should follow the format set forth in these provisions as closely as possible when modifications are made and must insure that access points are properly identified. In addition, there may be some situations where further clarification in the instrument of the areas subject to control of access and access points is needed. The Agent should seek assistance from the Division R/W Agent in these situations.

If a local road or street that provided access to property in the before condition, especially one which might adjoin or is adjacent to a property line, is being dead-ended at the C/A line, a statement should be inserted stating that the road or street is being dead-ended and there will be no access to the project by virtue of the Control of Access line.

For both [FRM7-C](#) and [FRM7-CA](#), if easement areas are being acquired in addition to the right of way, descriptions for these easement areas, such as permanent or temporary drainage easements, temporary construction easements, and Utility easements are to be placed following the paragraph "IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests:" The name of the easement should be followed by the cadd description and appropriate easement clause. All [clauses](#) are located in the Chapter 7 forms.

7.06 [FRM7-N](#) PERMANENT DRAINAGE EASEMENT (PDE)

Generally, permanent drainage easements when being acquired with right of way, should be included in the right of way deed following the paragraph "IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests: " The name of the easement should be followed by the cadd description and appropriate pde clause.

EXAMPLE:

Permanent Drainage Easement - Point of beginning being N 11°53'37" E, 546.57 feet from a Point in the Center Line of -L- Sta. 25+00; thence to a point on a bearing of N 40°20'10" E, a distance of 97.3 feet (29.65 meters); thence to a point on a bearing of N 49°36'23" W, a distance of 77.0 feet (23.48 meters); returning to the point and place of beginning, being approximately 0.086 acre.

Said permanent drainage easement in perpetuity is for the installation and maintenance of drainage facilities, and for all purposes for which the Department of Transportation is authorized by law to subject same. The Department of Transportation and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said permanent drainage easement area(s) a drainage facility with all necessary pipes, poles and appurtenances, together with the right at all times to enter said permanent drainage easement area(s) for the purpose of inspecting said drainage facility and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said drainage facility, all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress. It is understood and agreed that the Department of Transportation shall have the right to construct and maintain the cut and/or fill slopes in the above-described permanent drainage easement area(s). It is further understood and agreed that Permanent Drainage Easement shall be used by the Department of Transportation for additional working area during the above described project. The underlying fee owner shall have the right to continue to use the Permanent Drainage Easement area(s) in any manner and for any

purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

When no permanent right of way is involved, [FRM7-N](#) is to be used with a metes and bounds description, either manually or CADD generated.

7.07 [FRM7-U](#) (PERMANENT UTILITY EASEMENT)

Generally, permanent utility drainage easements when being acquired with right of way, should be included in the right of way deed following the paragraph "IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests: " The name of the easement should be followed by the cadd description and appropriate pde clause.

EXAMPLE:

Permanent Utility Easement - Point of beginning being N 11°53'37" E, 546.57 feet from a Point in the Center Line of -L- Sta. 25+00; thence to a point on a bearing of N 40°20'10" E, a distance of 97.3 feet (29.65 meters); thence to a point on a bearing of N 49°36'23" W, a distance of 77.0 feet (23.48 meters); returning to the point and place of beginning, being approximately 0.086 acre.

Said Permanent Utility easement in perpetuity is for the installation and maintenance of utilities, and for all purposes for which the DEPARTMENT is authorized by law to subject same. The Department and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said premises a utility line or lines with all necessary pipes, poles and appurtenances, together with the right at all times to enter said premises for the purpose of inspecting said utility lines and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said utility lines, all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress. It is understood and agreed that the Department shall have the right to construct and maintain the cut and/or fill slopes in the above-described permanent utility easement area(s). It is further understood and agreed that Permanent Utility Easement shall be used by the Department for additional working area during the above described project. The underlying fee owner shall have the right to continue to use the Permanent Utility Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or

materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

When no permanent right of way is involved, [FRM7-U](#) is to be used with a metes and bounds description, either manually or CADD generated.

7.08 [FRM7-V](#) (AERIAL UTILITY EASEMENT)

Generally, aerial utility easements when being acquired with right of way, should be included in the right of way deed following the paragraph "IN ADDITION, and for the aforestated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests: " The name of the easement should be followed by the cadd description and appropriate AUE clause.

EXAMPLE:

Aerial Utility Easement - Point of beginning being N 11°53'37" E, 546.57 feet from a Point in the Center Line of -L- Sta. 25+00; thence to a point on a bearing of N 40°20'10" E, a distance of 97.3 feet (29.65 meters); thence to a point on a bearing of N 49°36'23" W, a distance of 77.0 feet (23.48 meters); returning to the point and place of beginning, being approximately 0.086 acre.

Said Aerial Utility Easement in perpetuity is for the installation and maintenance of an aerial utility facility, and for all purposes for which the DEPARTMENT is authorized by law to subject same. The Department and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said premises an aerial utility facility with all necessary poles and appurtenances, together with the right at all times to enter said premises for the purpose of inspecting said utility lines and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said utility lines, all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress. It is understood and agreed that the Department shall have the right to construct and maintain the cut and/or fill slopes in the above-described aerial utility easement. It is further understood and agreed that said aerial utility easement shall be used by the Department for additional working area during the above described project. The underlying fee owner shall have the right to continue to use the Aerial Utility Drainage Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement

area(s) by the Department of Transportation, its agents, assigns, and contractors.

When no permanent right of way is involved, [FRM7-V](#) is to be used with a metes and bounds description, either manually or CADD generated.

7.09 [FRM7-W](#) (DRAINAGE/UTILITY EASEMENT)

In situations where an area is to be used for both a permanent drainage easement and an Aerial utility Easement or Permanent Utility Easement, the plans should be revised to convert the overlapping area to a Drainage/Utility Easement (DUE)

Generally, Drainage/Utility easements (when being acquired with right of way), should be included in the right of way deed following the paragraph "IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests: " The name of the easement should be followed by the cadd description and appropriate DUE clause.

EXAMPLE:

Drainage/Utility Easement - Point of beginning being N 11°53'37" E, 546.57 feet from a Point in the Center Line of -L- Sta. 25+00; thence to a point on a bearing of N 40°20'10" E, a distance of 97.3 feet (29.65 meters); thence to a point on a bearing of N 49°36'23" W, a distance of 77.0 feet (23.48 meters); returning to the point and place of beginning, being approximately 0.086 acre.

Said Permanent Drainage/Utility easement in perpetuity is for the installation and maintenance of drainage facilities and/or utilities, and for all purposes for which the DEPARTMENT is authorized by law to subject same. The Department and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said premises a drainage facility and/or utility line or lines with all necessary pipes, poles and appurtenances, together with the right at all times to enter said premises for the purpose of inspecting said drainage facility and/or utility lines and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said drainage facility and/or utility lines, all trees and other obstructions that may in any way endanger or interfere with the proper maintenance and operation of the same with the right at all times of ingress, egress and regress. It is understood and agreed that the Department shall have the right to construct and maintain the cut and/or fill slopes in the above-described

permanent drainage/utility easement area(s). It is further understood and agreed that Permanent Drainage/Utility Easement shall be used by the Department for additional working area during the above described project. The underlying fee owner shall have the right to continue to use the Permanent Drainage/Utility Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

When no permanent right of way is involved, [FRM7-W](#) is to be used with a metes and bounds description, either manually or CADD generated.

7.10 [FRM7-D](#) TEMPORARY EASEMENTS

[FRM7-D](#) is used when there is no right of way and/or permanent easements being acquired along with temporary construction, temporary detour, temporary drainage, temporary utility, or temporary haul road easements, etc. When using [FRM7-D](#), insert the appropriate description, and the applicable expiration clause should be inserted in the special provisions

Generally, Temporary easements (when being acquired with right of way or permanent easements), should be included in the right of way deed or permanent easement following the paragraph "IN ADDITION, and for the aforesaid consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests: " The name of the temporary easement should be followed by the cadd description and appropriate expiration clause.

A. Descriptions

It is preferable that a metes and bounds description, either manually or CADD generated, of the easement areas be used. However, when it is not practicable to use a metes and bounds description, a maximum width description may be used. Example:

An area, having a maximum width of _____ feet lying outside of and adjacent to the right of way as shown on the project plans, and being located between Survey Station _____ and Survey Station _____, left/right of Survey Line _____..

B. Expiration - There are two expiration [clauses](#) to choose from. The Agent should examine the plans and if any portion of the slope-stake line is within the temporary easement, expiration clause below (No. 1) is used:

1. It is understood and agreed that the DEPARTMENT shall have the right to construct and maintain the cut and/or fill slopes in the above-described areas until such time that the property owners alter the adjacent lands in such a manner that the lateral support of the cut and/or fill slopes is no longer needed. Any additional construction areas lying beyond the right of way limits and beyond any permanent easement areas will terminate upon completion of the project. The underlying fee owner shall have the right to continue to use the Temporary Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

If no portion of the slope-stake line is within the temporary easement, the expiration clause below (No. 2) is used:

2. This construction easement shall expire upon completion and acceptance of the aforementioned project. The underlying fee owner shall have the right to continue to use the Temporary Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

EXAMPLE:

Temporary Construction Easement - Point of beginning being N 11°53'37" E, 546.57 feet from a Point in the Center Line of -L- Sta. 25+00; thence to a point on a bearing of N 40°20'10" E, a distance of 97.3 feet (29.65 meters); thence to a point on a bearing of N 49°36'23" W, a distance of 77.0 feet (23.48 meters); returning to the point and place of beginning, being approximately 0.086 acre.

It is understood and agreed that the DEPARTMENT shall have the right to construct and maintain the cut and/or fill slopes in the above-described areas until such time that the property owners alter the adjacent lands in such a manner that the lateral support of the cut and/or fill slopes is no longer needed. Any additional construction areas lying beyond the right of way limits and beyond any permanent easement areas will terminate upon completion of the project. The underlying fee owner shall have the right to continue to use the Temporary Easement area(s) in any manner and for any purpose, including but not limited to

the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

OR

This temporary construction easement shall expire upon completion and acceptance of the project. The underlying fee owner shall have the right to continue to use the Temporary Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the Department, obstruct or materially impair the actual use of the easement area(s) by the Department of Transportation, its agents, assigns, and contractors.

7.11 FRM7-T OPTIONS

Options can be obtained when agreements have been reached for a fee simple purchase of a total property pending the execution of a deed at the closing of the transaction. The Option (FRM7-T) should be completed, and included with the final report. However, the preferred method of purchase is by execution of the deed (FRM7-J) at the time of settlement (see below).

An expiration date of at least ninety days should be inserted in the Option to insure adequate time to process the claim for payment and to close the transaction. In order to insure sufficient time to clear up all liens and encumbrances, a period of time up to six months may be warranted. In addition to the expiration date, the Agent should place \$1.00, as consideration for the grant of the Option, in the body of the form, along with adequate title information and description for the subject property, in the body of the Option form. The closing attorney should promptly draw the warranty deed conveying the property to the Department of Transportation and submit the proposed deed to the Agent to be included with the final report. The Agent shall send a copy of the option to the closing attorney along with the closing papers to assist him/her in preparing the deed. **Note: If the closing attorney prepares the deed, it must be accepted by the Division R/W Agent prior to being recorded.**

In the event an owner refuses to comply with the terms of the Option, the Assistant State Negotiator or State Negotiator should be contacted.

7.12 FRM7-J GENERAL WARRANTY DEEDS FRM7-JJ SPECIAL WARRANTY DEEDS

Generally, a warranty deed is used in the following situation:

1. When the entire property is located within the right of way
2. When the Department is acquiring a remnant (residue)
3. Certain situations when the Department is acquiring the entire property (r/w & remnant)
4. Other situations as approved by the Raleigh R/W Office

When the entire property is located within the right of way, the Agent may prepare [FRM7-J](#), typically using the description from the owner's deed. If the owner's description is not appropriate because he/she has sold a portion of it, a cadd description or manually drawn description will suffice. The total amount of payment should be shown in the [FRM7-J](#) and the claim will be processed in the typical way. The total amount of payment should be inserted in the deed. Prior to closing the Division R/W Agent will sign the deed on the ACCEPTED FOR THE DEPARTMENT line.

When the Department is acquiring a remnant (residue), there are two accepted methods of deed preparation:

- A. The Agent may prepare a deed for the r/w and easements, and a separate [FRM7-J](#) for the remnant. The description for the remnant should only cover the remnant and can be by cadd or manually described). The amount of the approved appraisal and any adjustment is placed on the deed for the r/w & easements, and the value of the remnant according to the memorandum to purchase, is inserted in the [FRM7-J](#). The disadvantage to this method is the additional cost of recording two deeds, and the possibility that the r/w or easements may change after the recording.
- B. The Agent may prepare one [FRM7-J](#) that covers the entire property being acquired. However, if there is a reminder that the owner will retain method (A) must be used. This could occur if there are two remnants and the owner wants to sell one and keep the other.

The R/W Cadd unit, upon request, will furnish a cadd description for a remnant.

Deeds should be drawn in favor of the Department of Transportation, an agency of the State of North Carolina. The total amount of payment should be shown in the [FRM7-J](#) and the claim will be processed in the typical way. Prior to closing the Division R/W Agent will sign the deed on the ACCEPTED FOR THE

DEPARTMENT line.

Occasionally, a remnant is acquired as a part of the settlement of a condemned claim. In these cases, the AG Attorney who settled the claim will prepare and record the Warranty Deed. The attorney may request assistance from the Agent or R/W Cadd Unit with the description.

The department in all of its instruments seeks general warranty from the property owner. Occasionally, an owner, or their attorney, may desire or demand that warranty language be altered in the Department's instruments. If these situations occur, the Agent should contact the Assistant State Negotiator for further directions. Typically, the Assistant State Negotiator will discuss the situation with the Attorney General's Office. [FRM7-JJ](#) may be used

The Agent should not change the warranty provisions in the Department's instruments with first obtaining approval from the Assistant State Negotiator or State Negotiator.

[FRM7-JJ](#) is a Special Warranty Deed. This deed should only be used with the permission of the Assistant State Negotiator or higher managers. With consent from the Attorney General's office and permission from management, [FRM7-JJ](#) may be used in place of [FRM7-J](#).

7.13 RELEASE DEEDS OR SUBORDINATION AGREEMENTS

Where it is necessary to secure a release under a deed of trust, the Right of Way Agent should use [FRM7-L](#). The original is included with the Final Report. The release should be executed by the holder of the deed of trust and the trustee. The Agent will insert a clause in the last paragraph of the release as follows: "The undersigned make this release with the understanding that \$_____ of the consideration set forth in the above-mentioned Deed is to be paid to (Mortgage Holder's Name) and the balance, if any, is to be paid to _____ (typically the Owners). The word "none" is inserted in the first blank if the lending agency releases all of the consideration to the property owner. The word "all" is inserted if the lending agency or person holding the deed of trust requires all of the consideration. A stated amount of money can be inserted if the lending agency or holder of the deed of trust required a portion of the consideration. The r/w deeds or easements should be recorded prior to the release being recorded by the closing party so that the recording information for the instrument can be shown in the release. The Agent will find that, in some instances, lending agencies may prefer to use their own form of release deed or subordination agreement which forms generally will be satisfactory to accept subject to the approval of the Attorney General's Office. The release will be

discussed again in Chapter 11.

Where it is necessary to secure a release under a lease, including billboard leasehold interests, the Agent should use See [FRM7-M](#).

7.14 DEED FOR PURCHASE OF BUILDINGS LOCATED PARTIALLY OUTSIDE THE RIGHT OF WAY

In those transactions where the Department is purchasing a building that is located partially within the right of way and partially outside of the right of way or easements, the following clause should be inserted in the instrument:

It is understood and agreed that the above recited consideration includes the purchase by the Department of the **(description of structure)**, a portion of which is located outside the previously described Right of Way. It is further understood and agreed that the undersigned hereby grants to the Department, its successors and/or assigns, the right of ingress and egress over the property of the undersigned to the extent necessary to inspect, abate, remove and dispose of the entire **(description of structure)**, and the undersigned will have no claim for damages with the Department, its successors and/or assigns, as a result of the **ingress and egress over the property of the undersigned, and the inspection, abatement, removal and disposal of the entire (description of structure)**

Sometimes a structure will be located within a temporary easement and is to be purchased along with the described temporary easement. In this situation the above clause can be worded in such a way to include the improvement that is lying completely within the temporary easement.

Whenever using this clause, the agent should first make sure he/she has obtained a copy of the affidavit from the appraiser indicating that the entire structure should be acquired.

An alternate to using the above clause, is to place a temporary easement around the entire structure.

7.15 ACCESS CHANGE AGREEMENT

Occasionally, a property owner may request that the Department revise or move an existing access point on a claim that has been closed (or if condemned, the claim has been concluded). These requests must go through a formal review process which is described in Chapter 14 of this manual. There may be situations of this nature where the Department would require monetary consideration from the owner to make such a change due to the fact that the

access change could enhance the value of the adjacent property. Division R/W Agents and Agents should understand this process and be able to explain it to owners. Access Points on parcels that have been closed, (or if condemned, the claim has been concluded) cannot simply be moved by a plan change.

7.16 SPECIAL AGREEMENTS, PROVISIONS, AND CLAUSES

Right of Way Employees should not add unapproved clauses to or change the wording of the approved instruments without the approval of the Assistant State Negotiator, State Negotiator, Manager or Assistant Manager. Usually, any proposed changes will be carefully reviewed with the Attorney General's Office to be sure that they convey the intended meaning and are not ambiguous or subject to other interpretation, and they protect the Department's interests.

The most common special provisions are those specifying how the settlement proceeds are to be paid, or provisions permitting reconnections of driveways.

7.17 DEEDS AND EASEMENTS WHERE PLANS NOT RECORDED

GS 136-19.4 requires that right of way plans be recorded in the courthouse in the county in which the project is being built. In some instances the Department may make highway improvements based on a sketch when no plans are available. In these instances, the Agent will use the applicable instrument, delete the standard wording which refers to the plans being recorded in the Office of the Register of Deeds and add in one of the two following clauses:

1. Said easement widths, station numbers, survey lines and additional easement areas being delineated on that set of plans for State Highway Project _____ on file in the office of the Department of Transportation in Raleigh, North Carolina, to which plans reference is hereby made for greater certainty of description of the easement areas herein conveyed and for no other purpose.

OR

2. The final right of way plans showing the above described area are on file in the Office of the Department of Transportation in Raleigh, North Carolina, reference to which plans is hereby made for purposes of further description and for greater certainty.

When adding one of the two clauses above, the Agent should delete from the instrument the following:

“The final right of way plans showing the above described right of way are to be certified and recorded in the Office of the Register of Deeds for said County pursuant to [N.C.G.S. 136 19.4](#) reference to which plans is hereby made for purposes of further description.”

The Agent should include the sketch or plan showing the acquisition with the final report.

7.18 CONVEYANCES FROM FEDERAL AGENCIES

Conveyances of right of way acquired from federal agencies will be accomplished by the use of easement forms or other instruments prepared by the appropriate Federal agency and will be handled as set out in Federal Highway Administration [23 CFR 710, Subpart F](#). An exception to this will be that rights of way acquired from the US Forest Service for nonfederal aid highway projects will be by the use of special use permits issued by the Forest Service. Conveyances from Federal agencies will be handled by the Raleigh RW Unit. If appropriate, the easement should be recorded.

7.19 ACQUISITION OF SECONDARY ROADS RIGHTS OF WAY

The following agreements will be used in the R/W for secondary road improvements and additions to the State Highway Maintenance System.

SR Improvement - Staked

This easement form is to be used for parcels involving the improvement of secondary roads where no consideration is paid for right of way and where the right of way is staked out on the ground. ([FRM7-E](#))

SR Improvement - Centerline

This easement form is to be used for parcels involving the improvement of secondary roads where no consideration is paid for right of way and where the centerline of the existing road coincides with the centerline of the right of way. ([FRM7-F](#))

Note that the SR Improvement - Staked and the SR Improvement - Centerline forms contain the following phrase -- “*...and such additional widths as might be*

necessary to provide for cut and fill slopes, sedimentation control and drainage of the road.” This statement is rather broad and some property owners may object to signing the agreement with this clause. The Agent, in these cases, should check with the District Engineer, and if it is found that construction limits, sedimentation control measures and drainage can be contained within the right of way, it will be permissible to type a new easement omitting this clause. If it is evident that the construction limits will exceed the right of way, and the property owner objects to signing the agreement as prepared, it will be satisfactory to insert in the agreement a qualifying clause to the effect that it is understood and agreed that the cut and fill slopes referred to above may exceed the right of way a maximum of _____ feet. If there is a drainage outfall ditch that will extend some distance from the project, this may be handled by a separate drainage easement which will be covered in a separate paragraph of this section. The Agent must obtain book(s) and page numbers of all deed(s) references in identifying the parcel on the secondary easement forms. In some extreme circumstances, it may be necessary to use the “bounded by” line to supplement the identification of the property from which right of way is being acquired, and in these situations, the property or parcel should be bounded on all sides. Any specific construction provisions or concessions and right of way reductions must be approved by the District Engineer. Payment for buildings and condemnation on secondary roads will be discussed later in the Manual.

SR Addition - Centerline

This easement form is to be used for roads to be added to the secondary system on parcels where no consideration is paid for the right of way and where the centerline of the existing road coincides with the centerline of the right of way.

([FRM7-G](#))

SR Addition - Map

This easement form is to be used for roads to be added to the secondary system where no consideration is paid for right of way and where the right of way is staked on the ground and is shown on a map which has been sent to the Raleigh office. ([FRM7-H](#))

SR Addition - Staked

This easement form is to be used for roads to be added to the secondary system on parcels where no consideration is paid for right of way and where the right of way is staked out on the ground. ([FRM7-I](#))

7.20 AGREEMENTS FOR LOCAL MATERIAL

The procurement of local material, such as borrow, sand, gravel, or topsoil and the storage and stockpiling of material will be implemented by use of the following three forms:

1. [FRM7-P](#) - Agreement for Local Material - This form is to be used where the material site is to be leased with payment being made in advance of removal of the material.
2. [FRM7-Q](#) - Agreement for Local Material - This form is to be used where the material is required for a particular project and payment will be based on actual pit measurements after the material has been removed.
3. [FRM7-R](#) - Agreement for Storage and Stockpiling Material - This form is to be used where sites are to be leased for the storage and stockpiling of material with payment being made in advance for use of the site

These requests usually come from the District Engineer. And the payment is handled through the final report process.

7.21 OBLIGATIONS OTHER THAN THOSE SET OUT IN THE INSTRUMENT WILL NOT BE RECOGNIZED

It is imperative that the right of way instruments specifically include all terms and conditions mutually agreed upon and that it reflects a complete agreement on all matters involved in the negotiation. It cannot be stressed too strongly that **no obligations other than those set forth in the instrument will be recognized and the performance of the terms and conditions contained therein relieves the Department of any and all further obligations or claims.** Under no circumstances should the Negotiating Right of Way Agent make verbal commitments or side agreements which:

1. are not stated in writing in the appropriate instrument or
2. Obligate the Department to any continuing maintenance obligation extending beyond the completion date of the project.

7.22 WARRANTY PROVISIONS

The Department in all of its instruments seeks general warranty from the property owner. Occasionally, an owner, or their attorney, may desire or demand that warranty language be altered in the Department's instruments. If these situations occur, the Agent should contact the Assistant State Negotiator for further

directions. Typically, the Assistant State Negotiator will discuss the situation with the Attorney General's Office. [FRM7-JJ](#) may be used

The Agent should not change the warranty provisions in the Department's instruments with first obtaining approval from the Assistant State Negotiator or State Negotiator.

7.23 INDEMNIFICATION OR HOLDING PARTIES HARMLESS IN INSTRUMENTS PROHIBITED

During the negotiation of a claim, a grantor may desire or demand that language be placed in the deed or agreement that would require the Department of Transportation to indemnify or otherwise hold that party harmless from any act, activity, responsibility, loss, damage, and/or expense incurred by that party on their property as a result of any action taken by or on behalf of the Department.

The Agent cannot indemnify or hold harmless a grantor or property owner from any action taken by the Department of Transportation.

If this situation arises, the Agent should contact the Assistant State Negotiator for further directions. Typically, the Assistant State Negotiator will discuss the situation with the Attorney General's Office.

7.24 POLICY ON VOIDING OR SUPERSEDING SIGNED RIGHT OF WAY INSTRUMENTS

After a right of way instrument has been signed by the grantor(s), it is acceptable to type or print names and addresses in the heading, type or print names under the signatures, complete the notary, type or print the amount of revenue stamps, and in the case of releases, add appropriate recording information. **Other than the above, the instrument shall not be altered in any way, unless the grantors initial the change. Furthermore signed instruments may not be superseded, or canceled by the Agent making the settlement.** Instruments may only be canceled by the Manager or Assistant Manager of Right of Way and then only where:

- A. There is a reasonable doubt that the negotiation did not reflect complete agreement
- B. The description is found to be deficient
- C. Provisions in the instrument are contrary to statute or policy
- D. It is ambiguous or misleading as to meaning or intent

In those instances when a second or subsequent instrument is required, it is recommended that the original or existing right of way be described in the new instrument along with the proposed right of way appropriation. Special provision clauses should be placed in the body of the new instrument and not in the top section to avoid creating a misleading or questionable easement.

The Division R/W Agent should seek direction from the Assistant State Negotiator should this situation arise.

7.25 DEDICATION OF RIGHT OF WAY AND EASEMENTS

Frequently, the Department, as a part of a driveway permit, will require a property owner/developer to donate or dedicate right of way or easements necessary for the maintenance of the existing roadway. The right of way or easements may be along the property owner/developers property or they may extend onto other owner's property. These areas typically are required for turn lanes into the developed property. This section does not apply to new roads being considered for addition to the State Maintenance system (subdivision roads), but additional r/w or easements adjacent to existing state maintained roads.

In these cases, the District Engineer should identify size and type of the areas needed for dedication and direct the developer to contact the Division R/W Agent.

The dedication of the right of way or easements can be accomplished by a plat that contains the proper dedication statement dedicating the areas to the public. Dedication can also be accomplished by recordable instrument that is accepted by the Division RW Agent. Some counties require a recordable instrument before they will recognize the dedication.

The Division R/W Agent should provide the developer examples of acceptable plats, or the forms for dedication and request that the developer prepare and submit them for review/checking prior to execution and recording. For plats, the developer records the plats and informs the Division RW Agent of the recording information and the Division RW Agent informs the District Engineer and files the recorded forms in the Office files.

For instruments, the developer returns the signed/notarized instruments to the Division RW Agent for acceptance. The accepted forms are returned to the developer for recording. The developer informs the Division RW Agent of the recording information and the Division RW Agent informs the District Engineer and files the recorded forms in the Office files.

7.26 PRIVATE ACCESS EASEMENTS

Typically, in order to provide access to a property that would otherwise be isolated, the Department will acquire additional right of way, and route an access road or drive across that right of way. In the event that the Department agrees to construct a private access road across the lands of another to provide access to a property that would otherwise be isolated, the Agent, with the concurrence of the Assistant State Negotiator, is to prepare an agreement in accordance with the draft of proposed access agreement shown as [FRM7-N](#). This agreement is rarely used.

Chapter 8 EXECUTION AND ACKNOWLEDGMENT OF INSTRUMENTS

8.01 EXECUTION OF INSTRUMENTS - GENERAL

All deeds and easements, must show the names and addresses of all grantors, and must be signed and sealed by all grantors. The grantors' signatures must match the names being notarized by a Notary Public. Where practicable, the names of the grantors should agree with their names as they appear on the instruments of record under which they derive their interest in the property. Signatures, notaries, and the names appearing in the heading of the instruments should all match. As stated in Chapter 7, the name of the signing party should be typed or printed legibly beneath his/her signature. With the proper execution of the instrument of conveyance by all parties named as grantors and their acknowledgment by a Notary Public, the instrument of conveyance can be recorded in the county registry thereby transferring title to the acquired property or rights of way from the grantors to the Department of Transportation.

8.02 ACKNOWLEDGMENT OF INSTRUMENTS (NOTARY)

Per G.S. 47-27, all right of way deeds, easements and other instruments of conveyance shall be recorded. These instruments of conveyance cannot be registered as public records until an authorized official, such as a notary public, certifies that the documents were executed properly. The prerequisites to certifying instruments of conveyance for recording are the proper acknowledgment of all signatures of the grantors and the attestation of the acknowledgment by a notary public. An acknowledgment is an act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily. An attestation occurs when the notary "attests" his official acts by making a clear and legible impression of his seal or stamp, by his proper signature, by the readable appearance of his name and a statement of the expiration date of his notary commission on the instrument of conveyance or document which is being acknowledged.

The Notary Public Guidebook for North Carolina published by the Institute of

Government, The University of North Carolina at Chapel Hill serves as a guideline for powers and functions of notaries and as a reference for properly certifying instruments of conveyance for recording. This publication is available through the Notary Division of Secretary of State's Office in Raleigh or the Publications Division of the Institute of Government.

In the negotiation and the settlement of claims, Negotiating Agents (who are required to be Notary Publics) must insure the proper certifications, acknowledgments and attestations of right of way deeds, agreements and other instruments of conveyance have been performed or have occurred so they can be recorded. When instruments are prepared by the Agent in anticipation of settlement and execution by a property owner, appropriate acknowledgment certificates should be attached or affixed to the instruments for execution, especially; when the instrument will be mailed or given to an out-of-town or out-of-state owner for execution and notarization. An Agent who is a notary in North Carolina can perform official notarial acts and functions in any of the one hundred counties of North Carolina even though he/she has been commissioned for a specific county.

Department of Transportation employees, who are Notary Publics, must see a grantor execute an instrument in person in order to notarize their signature.

If it is not practicable for an individual to personally appear before a notary, the signature should be properly witnessed by some person of age, not an employee of the Department of Transportation, who may later be available to appear before a notary public or other such official as a subscribing witness so that the execution of the instrument can be proven for recording in the office of the Register of Deeds.

8.03 OWNERSHIP BY PERSONS

In North Carolina, the most common form of ownership by a person is in his or her individual capacity. Ownership by a person may be individually (in severalty) or jointly (1) with his or her spouse as tenants by the entirety or (2) with other owners as tenants in common. Tenancy by the entirety is ownership by a husband and wife in such a manner that, except through joint action, neither has a disposable interest in the property during the lifetime of the other but, upon death of either, the property goes to the other. Tenancy in common is the ownership of property by two or more persons, each of whom has an undivided interest in the whole property which, upon his/her death, passes to his/her heirs and not to the surviving remaining co-owners.

Where property is owned by a person individually (in severalty) or as a tenant in

common, an owner's spouse has an interest in the property by reason of their marriage, better known as a marital interest. In all cases, an owner's marital status will be determined and shown in the heading of the instrument of conveyance, (James Jones, Single; James Jones, Divorced; James Jones, Separated; James Jones, Widower; James Jones and wife, Mary Jones; Mary Jones, Widow; etc.). In order to clear this marital interest, the spouse must join with their husband/wife owner in the execution of the instrument. Occasionally, a spouse will refuse to waive his or her interest in the property by joining in the execution of an instrument with the husband/wife owner; or the husband/wife owner may refuse to execute the instrument if the spouse is called upon to sign or is made a party to payment. In such cases, the Agent should report the circumstances to the Raleigh Office for a decision as to the proper course to follow.

There are numerous instances where the marital rights of a spouse in the owner's property have been extinguished, such as by absolute divorce, legal separation by judgment or deed of separation, pre-marital agreement, and abandonment or other misconduct by the spouse. In those instances where the marital property rights of the spouse of the husband/wife owner may have been extinguished, legal advice by an attorney should be sought to determine whether the execution of instrument by the spouse is necessary; if so, the Agent should report the circumstances to the Raleigh Office for a decision as to the proper action to follow.

Where property is owned by a person with his spouse as a tenant by the entirety, both the husband and the wife must join in the execution of the same instrument. By the entering of an absolute divorce, a tenancy by the entirety will be converted into a tenancy in common. A tenancy by the entirety is not terminated by a mere legal separation, by a deed of separation or a judgment, by abandonment or other misconduct of either spouse, or by the other instances which would terminate a spouse's marital interest in the property of the husband/wife owner. Again, where there is any question, legal advice should be sought from an attorney and the Agent should report the circumstances to the Raleigh Office for a decision as to the proper course to follow.

At the end of this Chapter are examples of headings, signature blocks and notaries for various situations. All Notary Blocks are contained within Chapter 7 Forms folder.

The acknowledgment of signatures of grantors of persons serving in the armed forces of the United States may be made by an officer of the Army, Navy, Air Force, Marine Corps, Coast Guard, or Merchant Marines having the rank of warrant officer or higher. No official seal shall be required of such officers of the above services, but he shall sign his name, designate his rank, and give the name of his ship or military organization and the date. It is not required that the place of taking the acknowledgment be given.

8.04 OWNERSHIP BY CORPORATIONS

A corporation is a legal entity separate from the individuals who are its officers, directors, and stockholders. It is bound only by the authorized acts of its agents. Instruments secured from corporations must be executed in corporate form using one of the following corporate forms of acknowledgment.

With the ratification of the general statutes regarding corporate conveyances, [N.C.G.S. 47-41.01\(b\), \(c\), & \(d\)](#) and [N.C.G.S. 47-18.3](#), effective October 1, 1999, corporate conveyances may now be executed in one of two (2) ways: (1) the new method, involves the execution of the instrument by an authorized official of the corporation with the acknowledgment not requiring the attestation of another official of the corporation nor the affixing of a corporate seal (2) the traditional, and still acceptable, method involves the execution of the instrument of conveyance by one officer of the corporation whose signature is attested (witnessed) by another officer of the corporation who, in turn, affixes the corporate seal to the instrument.

The official corporate name, together with the state of its incorporation, should appear both in the heading of the instrument and also above the space for the signature of the official signing the instrument on behalf of the corporation. The corporation official signing the instrument must be authorized to do so in the name of the corporation and will be the chairman, chief executive officer, president, a vice-president or assistant vice-president, treasurer, or chief financial officer. The title or official capacity of the person(s) executing the instrument should be shown. The official name of corporations authorized to do business in North Carolina may be accessed from the State of North Carolina – Secretary of State's Web Site - Corporations Section.

If an attesting officer acknowledgment form is to be used when the instrument has been executed by the chairman, chief executive officer, president, a vice-president or assistant vice-president, treasurer, or chief financial officer, it must be attested by the secretary or assistant secretary, trust officer, assistant trust officer, or, in the case of a bank, the secretary, assistant secretary, cashier, or assistant cashier who is authorized to do so in the name of the corporation. The corporate seal may be affixed to the instrument by the attesting officer. Only the attesting officer need appear before the notary to give the acknowledgment.

Right of Way Agents are not authorized to reproduce any similarity of a corporate seal for property owners. The affixing of the corporate seal to an instrument is evidence that the seal is the duly adopted corporate seal of the corporation and that it was affixed by a person duly authorized to do so.

* Note that the words "a corporation" may be omitted when the name of the corporation ends with the word "Corporation" or "Incorporated".

This section on corporate conveyances has been broadened to provide for the execution of instruments by officers or agents of a corporation other than those mentioned above. Now, any officer, manager or agent of a corporation may execute instruments of conveyance, and the same can be recorded in the register of deeds, provided a signed and attested resolution of the corporation's board of directors authorizing the officer, manager or agent to execute the instrument is attached to the instrument of conveyance or is separately recorded in the register of deeds office wherein the real property interest lies provided the separately recorded resolution was executed prior to the execution of the instrument of conveyance and pursuant to the authority contained in the resolution.

8.05 OWNERSHIP BY A LIMITED LIABILITY COMPANY

A limited liability company is owned by its members, but the business affairs of a company are conducted by its managers.

8.06 OWNERSHIP BY PARTNERSHIP

Property is sometimes owned by a person or corporation with one or more other persons or corporations as an asset of a partnership. The fact that the property is a partnership asset may or may not be revealed by the record title to the property. Generally speaking, one partner may legally execute an instrument for the partnership and bind the other partners; however, as a matter of precaution, the Agent should require all of the partners to execute the instrument. Again, generally speaking, the spouse of a person who is a partner has no marital interest in property which is an asset of the partnership; however, as a matter of precaution, the Agent should require all spouses of the partners to join with them in the execution of the instrument. Waivers of this practice should be obtained from the Assistant State Negotiator.

If property is an asset of a partnership, the names of the partners (and their spouses) and the name of the partnership should appear in the heading of the instrument.

8.07 OWNERSHIP BY ESTATE

When a person dies owning property individually (in severalty) or as a tenant in common (with others), title to the property immediately vests in his heirs at law when he/she dies without a will, or in his devisees when he dies with a will which

devises the property. For a period of two years following his death, the property of a deceased person is subject to claims for his debts and the cost of the administration of his estate. For this reason, any conveyance of any interest in his property by his heirs at law or devisees during this period of time may be declared to be void and of no effect. This two-year period of time may be shortened if the administration of the estate is closed; that is, if all of the debts and costs of administration of the estate of the deceased owner are paid, a final account is filed with the Clerk of Superior Court, and the personal representative (i.e. the administrator or executor) is discharged by the Clerk of Superior Court from further responsibility in connection with the administration of the estate.

During this period when the property is subject to the debts and costs of administration of the estate of a deceased owner, there are several ways in which a good title may be obtained free from such claims. Where the deceased owner has left a valid will, the executor/executrix may be authorized by its terms to convey real property of the estate; if so, an instrument can be executed by such executor/executrix in his/her official capacity without the necessity of the joinder of the devisees. Where the deceased owner has left a will without including terms or covenants authorizing the conveyance of real property or case may be, must execute the instrument with the joinder of the personal representative, i.e., the executor/executrix who does not have the authority to convey real property or an administrator/administratrix who has been appointed by a court to take charge of a deceased owner's estate. For questionable situations involving estates and the conveyance of real property, the Agent should report the circumstances to the Raleigh Office requesting legal advice from an attorney to determine a proper course of action to follow.

In those instances where the executor of an estate is authorized by the terms of the will to convey the real property of the estate, the instrument should be signed by the executor/executrix in his/her official capacity. Acceptance of execution by an executor/executrix should be supported by information in a certificate of title or by an attached copy of the will.

(Official Seal) After the period has passed in which the property is subject to claims for the debts and costs of administration of the estate of the deceased owner when the estate has been probated and closed, the instrument should be executed by his/her heirs at law or devisees, as the case may be, and an acknowledgment form for individuals would be used.

8.08 OWNERSHIP BY MINORS

Generally speaking, persons under the age of 18 years are minors and cannot convey their property. In such cases, it will be necessary to have a guardian ad litem appointed by the Clerk of Superior Court. The guardian ad litem through a special proceeding seeks authority from the Clerk and approval by a judge of Superior Court for the guardian to be able to execute an instrument of conveyance on behalf of the minor. When dealing with claims involving a minor, the Agent, with the approval of the Raleigh Office, should employ the local abstracting attorney who furnished the certificate of title to handle this special proceeding to appoint a guardian ad litem for the minor. Before doing so, it is advisable that a tentative agreement be reached with the natural or general guardian of the minor. A copy of all court documents filed in such proceedings along with the signed court order appointing a guardian should be sent to the Raleigh Office along with the instrument executed by the guardian on behalf of the minor.

Where the consideration due the minor amounts to less than \$250, the special proceeding in court may be waived with the prior approval of the Raleigh Office. In acquisitions where Federal-aid is involved, the special proceeding will not be waived regardless of the amount of compensation involved.

If the minor is married to a person 18 years old or older, such a minor may validly execute an instrument in the following situations only: (1) to waive such minors marital interest in the property owned by the minor's spouse; or (2) jointly execute with the minor's spouse, an instrument with respect to property held with such minor's spouse as tenants by the entirety or tenants in common.

If the minor's spouse is under 18 years of age or if the minor owns the property and the minor's spouse owns no interest except a marital interest, the exceptions to the general rule stated above as to married minors do not apply.

8.09 OWNERSHIP BY INCOMPETENTS

Generally speaking, an instrument executed by an incompetent person is not valid. Where property is owned by an incompetent, the Agent should negotiate with such guardian as may be available. After reaching a tentative agreement, the Agent with the approval of the Raleigh Office should employ the local abstracting attorney who furnished the certificate of title to arrange for a special proceeding to authorize the guardian to execute the instrument. A copy of all documents filed in such proceedings should be sent to the Raleigh Office along with the instrument.

The duly appointed guardian of the incompetent spouse of a person who owns property in severalty or as a tenant in common is authorized to join with such person in the execution of an instrument in order to waive the incompetent spouse's marital interest in the property without the necessity of special proceeding.

The grantor heading, execution and acknowledgment of an instrument of conveyance involving an incompetent where a guardian has been appointed by the court to execute the instrument will be the same form as that for a minor outlined below. The instrument should specify who the check is to be paid to.

8.10 PROPERTY OWNED BY RELIGIOUS, CHARITABLE OR FRATERNAL ORGANIZATIONS AND CORPORATIONS

Care should be taken that instruments from religious, charitable, or fraternal organizations or corporations be executed in conformity with the by-laws and constitutions of such groups. Resolutions of authority to execute such instruments shall be obtained from the particular organization upon execution of the instrument, and a certified copy of such resolution should be attached to the instrument. Generally, these organizations appoint trustees who are empowered to execute instruments. The heading or body of the instrument should always show the name(s) of the party who hold(s) the title to the property, for instance, (Trustees for X church), rather than merely X church. **The check should be made payable to the organization, not the trustees.**

NOTE: In the Catholic Church, property is owned in the name of the diocesan bishop.

If a church or religious organization, a charitable or fraternal organization has incorporated and title to the property vests with the corporation, a corporate execution and acknowledgment should be used. If the organization is corporation, a resolution is not required to be a part of the final report.

8.11 PROPERTY OWNED BY POLITICAL SUBDIVISIONS

Instruments from cities, towns, counties, or other political subdivisions must be executed by the proper official. The "proper official" is the person authorized by the political subdivision's governing body to perform such an act. In the case of cities and towns, the city or town council will have authorized an individual to sign the instrument - usually the Mayor or City Manager. The official's signature should be attested by the city or town Clerk; and the official seal of the

municipality must be affixed. The name of the municipality should appear over the official's signature, and his official title should appear below the signature.

In the case of counties, the instrument should be signed by the Chairman of the Board of Commissioners or the County Manager -or whomever the County Commissioners have authorized to sign such an instrument. Again, the official's signature must be attested by the Clerk to the Board, and the official county seal be affixed.

In all cases, the instrument should be supported by a certified copy of a resolution by the governing board of the political subdivision authorizing its execution.

In addition, the Signature Block must contain a special section which states the date of the resolution. For Example:

IN WITNESS WHEREOF, GRANTOR, **pursuant to a resolution dated _____, has caused this instrument to be signed in its corporate name by its** CHAIRMAN OF THE WAKE COUNTY BOARD OF COMMISSIONERS, its corporate seal hereto affixed, and attested by it CLERK OF THE WAKE COUNTY BOARD OF COMMISSIONERS, by order of the WAKE COUNTY COMMISSIONERS, this the day and year first above writ

8.12 PROPERTY OWNED BY A TRUST

When encountering ownership by a trust, the Agent must first determine

1. that the property being acquired is part of the trust
2. who, as trustees, are empowered with the authority to act and execute an instrument of conveyance
3. the type of trust involved, a revocable or an irrevocable trust. (A revocable trust is one that can be taken back or extinguished while an irrevocable trust is one which cannot be changed, rescinded or extinguished.)
4. All trustees designated in the trust agreement must sign the instrument of conveyance.
5. A copy of the trust agreement or instrument **must be obtained** and placed in the final report. **In these cases the check should be payable to the trust, not the Trustee and the federal tax id is that of the trust.**

8.13 POWER OF ATTORNEY

Frequently, an Agent may encounter a Power of Attorney. This is a written document in which one party gives another party the right to do certain acts on their behalf. The power of attorney must be recorded in the county where the claim is located and it must grant the authority to convey real estate. In cases where there is a valid power of attorney, the r/w agreement may be executed by the person/entity who was granted the power of attorney. This is frequently one spouse for the other or a child for their parent, but is not limited to these situations.

Where a property is owned by a group of individuals, such as a number of heirs of an undivided estate, the negotiation and subsequent closure of the transaction may be greatly expedited and simplified if all or even a part of the individuals will agree to appoint one of their number to act for all. Where there is no existing power of attorney and the individual owners are willing to appoint one of the owners as their attorney-in-fact, the Agent should provide that individual person to be designated as attorney-in-fact with the standard Department of Transportation power of attorney form for execution by the individual owners. The owners and their spouses if any are to join in the execution of this/these form(s). All signatures must be properly acknowledged and notarized and the power of attorney must be recorded.

The statutes require that an acknowledgment by an attorney in fact under a power of attorney be given under oath and should be certified.

8.14 PROPERTY ENCUMBERED BY DEED OF TRUST

Where a deed of trust is held against the property and a separate release or subordination agreement is not secured, both the trustee and the beneficiary or cestui-que-trust (i.e. the holder of the note or other owner of the obligation secured) must join in the execution of the instrument along with the property owner. The names of both the trustee and the cestui-que-trust should appear in the heading of the instrument and the capacity in which they are executing the instrument should follow their names. Ordinarily the cestui-que-trust should execute the instrument first in order to authorize the trustee to execute the instrument. See Chapter 11 and Chapter 7.

8.15 ELIMINATION OF THE SEAL

Until recently, North Carolina was one of the states requiring that all instruments of conveyance be "signed, sealed, and delivered" in order to be valid. The word (SEAL) was required to be placed after the signature of the signatory, the person(s) or grantor(s) conveying an interest in real estate, on all instruments of conveyance in order for the conveyance to be valid.

With the recent enactment of the bill adding N.C.G.S. 39-6.5, the seal of the signatory is no longer required to affect a valid conveyance of an interest in real estate, to include powers of attorney empowering an attorney-in-fact to convey interests in real property in behalf of a principal. Of course, parties may still continue to execute instruments of conveyance under seal to obtain presumption of consideration created by sealed instruments.

The present requirement for all Department of Transportation instruments of conveyance and forms to be executed under seal, to have the word (SEAL) for all signatures, except for corporate transactions, will continue to be used even though the recent statute eliminates the need for it. It will, now, be permissible to accept any agreements or deeds not under seal since they will be valid under this new statute. This statute does not eliminate the requirement for a notary public to affix his/her seal when notarizing grantors' signatures on instruments of conveyance.

8.16 CERTIFICATION FOR RECORDATION

Before an instrument is entitled to be recorded, the Register of Deeds must examine the certificates of acknowledgment and certify them to be correct. The typical form for this certificate is as follows. However, many Register of Deeds Offices are no longer using this form in favor of a stamp at the top of page 1:

The foregoing Certificate(s) of _____			
is/are certified to be correct. This instrument and this certificate are duly			
registered on the	_____ day of _____	,20	
in Book _____	, Page _____	at _____	o'clock _____ M.
REGISTER OF DEEDS FOR _____ COUNTY			
BY: _____	Deputy/Assistant - Register of Deeds		

Chapter 9 SPECIAL CONDITIONS AND SITUATIONS

During the right of way acquisition process, unusual and complex situations may arise. The right of way agent should review any unusual situation with his/her supervisor to determine the position of the Department before proceeding with acquisition. Solutions to right of way problems may need to be tailored to fit the particular circumstance or situation. Some of these situations are set out in more detail in the following paragraphs.

9.01 DISPOSITION OF BILLBOARDS

The current procedure, as outlined herein for the disposition of billboards/outdoor advertising signs in the context of eminent domain acquisitions for highway purposes, involves those billboard structures which are leased or otherwise used for the purpose of advertising a product, a message or a business to the traveling public and are located on the proposed right of way of an active highway project. They are located off-premise, meaning the billboards are advertising business activities not located on the property or premises where the billboards are located. Billboards may be allowed by permit by the Department of Transportation and are regulated by the Administrative Procedures Act (APA) on the existing National Highway System and the pre-existing Federal Aid Primary System highways. The terms billboards and signs are synonymous and may be used interchangeably in this text. Billboards may fall under the classification of a junior poster panel, a standard poster panel, a painted bulletin, a monopole or a miscellaneous sign.

On-premise signs advertise businesses and their activities, which are physically conducted on the property upon which the sign is located, and their relocation or purchase will not be considered by these procedures.

Disposition of billboards on active highway projects is governed by [Chapter 133, Article 2](#), titled Relocation Assistance, and [Chapter 136, Article 9](#), General Statute [136-103](#) to [136-121.1](#) titled Condemnation, and is not to be confused with the acquisition by purchase of billboards under [Article 11 General Statute 136-126 to 136-140.5](#) titled Outdoor Advertising Control Act, the latter resulting from the Federal Highway Beautification Act.

THE FOLLOWING CRITERIA APPLIES TO BILLBOARDS:

Billboards are considered removable personal property and will be moved and/or relocated from the proposed right of way and or easement limits under the Relocation Assistance Program. Trade fixtures, by law, are considered removable personal property.

- **Relocation benefits must be offered to all billboards having a valid permit from DOT and on which no legal action has been taken to remove them from the property on which they are situated.**

- The billboard owner shall be given at least a ninety-day (90-day) notice in which to remove the billboard from the proposed right of way or easement. A 30 Day Notice to Vacate Letter will be sent to the billboard owner when the claim with the property owner is settled or condemned.
- In the acquisition of land or real property on which a billboard is situated, the billboard owner's leasehold or other interest, if any, in the property must be considered and acquired in addition to the underlying fee interest of the property owner prior to the 30 Day Notice to Vacate Letter being delivered for the relocation of the billboard . The exception to this is when the billboard can be relocated onto the remaining property of the lessor/ property owner, therefore not affecting the billboard owner's leasehold interest.
- An oral or written lease for duration of 3 years or less can be valid, even if the written lease is not recorded. A written lease for duration for three (3) years or more must be recorded to be valid. All written leases must meet these basic requirements in order to be valid: names of the lessors and lessees must be stated, contain a description of the land being leased, state the length of the lease and state a consideration or rental amount.
- Acquisition of the billboard owner's leasehold interest will be acquired separately from the acquisition of the right of way from the underlying fee owner of the land on which the billboard is located. Only with respect to billboard claims may the acquisition of the leasehold interest be acquired separately from the acquisition of the right of way from the underlying fee owner of the land on which the billboard is located.
- Illegal billboard or signs are not eligible for relocation benefits.
- In the project acquisition schedule, billboards shall be treated as "displacees" requiring 90-day notices and be acquired in compliance with key scheduled dates.

CLAIMS INVOLVING A VALID LEASE AND THE BILLBOARD MUST BE MOVED TO SUBSTITUTE PROPERTY (NOT ADJOINING OR ADJACENT TO ITS PRESENT LOCATION)

1. The Agent will first make contact with the Department's Regional Outdoor Advertising Coordinator for that particular Division or County to obtain a copy of the NCDOT permit issued to the billboard owner and to discuss with the coordinator, the possible solutions to the conflict.
2. The Agent will ascertain from the permit whether the billboard is considered conforming

or nonconforming. If the permit is non-conforming, the agent will determine, with the Regional Coordinators, the reasons for the non-conformity. Examples of a non-conformity status are: (zoning, size, spacing, height, double stack) Also, the Regional Coordinator should determine what needs to be done in order to bring the billboard to conforming standards, or if it is even possible to do so.

3. Permitted Billboards with a non-Conforming status cannot be relocated. A Right of Way Agent has two (2) options to employ for this type of permit. Option one (1) would be to offer a moving reimbursement based on the lower of two bids to include the disassemble, move, and reassembling of the sign to a conforming location with a new conforming permit. The moving bid will have to include costs to bring the structure into conformity, as determined by the Regional Coordinator. The sign owner must go through a new permit application process with the NCDOT's Outdoor Advertising Coordinators. Option two (2) is to offer a Loss of Tangible Personal Property payment, which would be the lower of the value in place of the structure or the cost to disassemble, move, and reassemble the structure to a conforming location as a new conforming permit. (this would not include the cost to modify the sign to bring it to a conforming status) When an option is chosen, the Regional Coordinator for that area should be contacted to manage the change with the sign owner. With option one (1) all advertising shall be removed by the sign owner without delay, to alleviate the department of any connection (legal or otherwise) to a product or company advertising on the sign face.
4. For the conforming billboards, the Agent will contact the Regional Outdoor Advertising Coordinator and determine whether the billboard permit requirements can be met if the billboard structure is relocated off of the newly acquired right of way, onto the remaining parcel after right of way has been acquired from the property owner for the project. Permit requirements are outlined in the DOT's *Outdoor Advertising Manual*. If the conforming permit requirements cannot be met, the billboard will be required to be relocated to a substitute conforming location. In cases where there is no remaining property on which to relocate a conforming billboard or where the property owner/lessor will not allow the billboard to be relocated to remaining property, the billboard will be required to be relocated to a substitute location. The sign owner must go through a new permit application process with the NCDOT's Outdoor Advertising Coordinators on all relocation, except when moving a conforming billboard off the newly acquired ROW, onto the remains of the original parcel. However Regional Coordinators should be notified so they may establish through GPS, the new sign location.
5. The Agent will establish if there is an existing local ordinance that will prohibit the relocation of a conforming billboard to adjacent property thus making the billboard 'nonconforming' in the after situation and will be required to be relocated to a substitute location.
6. For all nonconforming billboards, the Agent will obtain all possible lease information available in order to establish the presence of a valid lease. The billboard owner will be requested, in writing, to furnish copies of leases or memorandums of leases for

evaluation purposes in determining the presence of a leasehold interest in the property or right of way being acquired. If the billboard owner refuses to furnish copies of leases or memorandums of leases, the Agent shall check courthouse records for recorded lease information and contact the property owners for any other available lease information. You may also check with the Regional ODA Coordinators for possible leases. Billboard owners are required to provide a lease when requested or are subject to permit revocation. (North Carolina Administrative Code 2E.0207)

7. The Agent shall review all available permit and lease information with the Area Negotiator who will complete a Leasehold Determination form ([FRM9-B](#)) indicating how any leasehold interest should be handled. On questions concerning the validity of a lease, the Attorney General's Office should be consulted for a ruling or determination prior to the completion of the form.
8. On those particular parcels where it is determined that a leasehold interest exists, the Agent will request an appraisal from the Appraisal Section for the billboard owner's leasehold interest separate and apart from the property owner's value interest. The Leasehold Determination Form and all other supporting material shall be provided at the time of appraisal request. See Sections 5.84 and 5.101 for appraisal of leasehold interests. It is advisable to assign the parcel number in the appraisal request a special number to denote it is a leasehold appraisal. For example, Parcel R-3456 001 may be called R-3456 001BB (This parcel must be entered into SAP).
9. The Agent shall obtain estimates of moving costs for each billboard to establish relocation benefits for the billboard owner with the costs allocated between the cost to take the sign down and the cost to reinstall it or put it back up.
10. Upon receipt of the leasehold valuation or appraisal, the Agent will make an offer to the billboard owner to acquire the leasehold interest separate and apart from the offer made to the property owner for the underlying fee interest of the property and advise the billboard owner of eligible relocation benefit entitlements. The billboard owner's offer may be 'zero dollars' (\$0.00) or reflect some actual dollars or "bonus value" amount.
11. If the billboard owner accepts the offer for the leasehold or other interest in the property, the Agent will prepare and have the billboard owner execute an instrument for the release or acquisition of the leasehold and all other interests, if any, in the property. See Lease Release, [FRM7-M](#).
12. If the billboard owner refuses to accept the offer for the leasehold or other property interest, the Agent will request the Attorney General's Office to file condemnation on the billboard leasehold or other property interest, separate and apart from the underlying fee interest of the property owner.
13. After obtaining a release or conveyance of the leasehold and any other interest, or after condemnation of same, the Agent will notify the billboard owner that the billboard is to be moved on a specific date at least 90 days hence and that the billboard is eligible for

the receipt of relocation benefits.

CLAIMS INVOLVING A VALID LEASE AND THE BILLBOARD CAN BE RELOCATED ON THE SAME/REMAINING PROPERTY

In those instances where the billboard is delineated as “Conforming” on DOT’s permit, and where it does not conflict with a local ordinance prohibiting its relocation and where it can be relocated to the remainder of the adjacent/adjoining property of the property owner/lessor with mutual consent of the property owner/lessor and the billboard owner, the billboard owner is entitled to receive the costs associated with the moving and relocation of the billboard from the right of way being acquired. A 90-day notice to the billboard owner is required, and will be delivered after the acquisition offer has been made to the property owner. The 30 Day Notice to Vacate Letter will not be sent until after the acquisition of the fee interest from the property owner (lessor) by settlement or through condemnation. Condemnation of the billboard owner’s interest would not be filed in this situation.

CLAIMS INVOLVING A VALID LEASE WHICH EXPIRES PRIOR TO PROJECT LETTING

On those particular parcels where it is determined that the leasehold interest of the billboard has expired or is terminable prior to the letting of the project, and where the DOT has acquired the underlying fee interest from the property owner and is now considered the landlord, the Agent will take steps necessary to exercise the termination of the provisions of the lease through notification to the billboard owner that the leasehold interest is extinguished or terminates prior to the project letting, that no leasehold or other interest in the property is being considered, that the billboard is to be moved on a specific date at least 90 days hence from the date of extinguishment of the lease and that the billboard is eligible to receive relocation benefits.

CLAIMS WHERE NO VALID LEASE CAN BE VERIFIED

On those parcels where no valid lease can be verified, the Agent will notify the billboard owner that there is insufficient information upon which to base an appraisal of the purported interest or upon which to negotiate the acquisition of same. After acquisition of the fee interest of the property from property owner (lessor) by settlement or condemnation, the Agent will notify the billboard owner that the billboard is to be moved on a specific date at least 90 days hence and that the billboard is eligible to receive relocation benefits. Normally, condemnation will not be filed without a formal valid lease.

IF THE BILLBOARD IS NOT REMOVED WITHIN THE 90-DAY PERIOD

If the billboard owner has not made any effort and/or has not moved the billboard from the proposed right of way and/or easement by the final vacate date stated in the 30 Day Notice to

Vacate Letter, the billboard will be considered to have been abandoned by the billboard owner and the DOT may remove the billboard from the proposed right of way or easement at its discretion. After the 90-day notification period expires, the Agent will send out a letter, by certified mail, to the billboard owner advising that the billboard is, now, considered to have been abandoned by the billboard owner, that the billboard may be removed by the DOT and or its contractor within 30 days from the date of the letter and that the billboard may still be eligible for some relocation benefits. The abandoned billboard may be placed in the Roadway Contract as a Series 215, Demolition of Buildings and Appurtenances, item to be demolished/removed by the roadway contractor or may be removed by a demolition contractor. Billboards will not be removed by DOT forces nor will they be stored at a DOT facility or at another location at DOT's expense.

BILLBOARDS PARTIALLY WITHIN R/W OR EASEMENT

If a billboard which cannot be relocated to the remaining property of lessor/property owner lies partially in the proposed right of way and/or easement and partially outside of the right of way and/or easement, and which has not been relocated after proper notification, the Agent will obtain permission from the lessor/property owner to enter the remaining property outside the proposed right of way to the extent necessary for the DOT, or its contractor, to remove the billboard. If the property owner refuses to grant permission to exceed the right of way to remove that portion of a billboard outside of the right of way and/or easement, the Agent will request an agenda item, through the Manager of Right of Way, for the Board of Transportation to grant the authority for the DOT, or its contractor, to exceed the right of way and/or easement to the extent necessary to remove the billboard. Billboard removal items to be included in the Roadway Contract shall be denoted and submitted to the Project Design Engineer with the clearing and grubbing and building removal items as indicated in the Right of Way Schedule.

BILLBOARDS NOT ON THE FEDERAL AID OR PRIMARY SYSTEM PROJECTS

On some nonfederal aid primary designated highways or roads, billboards or signs may be encountered where DOT permits are not required: however, permits may be required from a local governing entity. Billboards located within proposed rights of way must be re-established on the remaining, adjoining property or on substitute property and will be eligible for relocation benefits.

9.02 WETLANDS

The current federal policy of no net loss of existing wetlands and protected species areas requires the Department of Transportation to implement plans for the mitigation of wetlands and the purchase of replacement sites prior to issuance of a permit for the construction of a highway project which impacts existing wetlands. The regulatory entity which ultimately approves mitigation plans and issues permits is the U. S. Army Corps of Engineers. No permits are issued until an approved plan of action to replace the impacted areas is developed. Other

agencies involved with site selection and approval include the Division of Water Quality of the North Carolina Department of Environment, Health and Natural Resources: Coastal Area Management (CAMA): North Carolina Wildlife Commission: US Fish and Wildlife Service and the North Carolina Department of Transportation Planning and Environmental Unit. A wetland, according to the 1986 Emergency Wetlands Resource Act, is defined as *land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.* (emphasis added) As specified by the definition, wetlands are characterized by: 1) hydric soils, 2) wetland hydrology, and 3) hydrophytic vegetation. Generally, the replacement sites for wetlands mitigation are considerably larger than the areas being disturbed and impacted by a highway project. The size of replacement wetland areas is measured in terms of needed credits. The required credits depend upon the particular characteristics and delineation of the impacted wetlands and upon the best acceptable method for mitigation. A single credit would be the ratio of the area, in acres, required to replace the loss of a single unit area, usually one acre, of wetland. Mitigation of wetlands may fall in the category of creation of a wetland area from a previously non-wetland usage requiring a 2:1 ratio, restoration or conversion of a previous wetland area back to a wetland usage requiring a 3:1 or higher ratio and/or the preservation of existing designated wetland areas requiring a 10:1 ratio. A particular site selected for the restoration of a previously converted wetland may include some of each type of mitigation thereby lowering the total area, and credits needed to fulfill the requirements for a proposed mitigation plan.

The process of acquiring replacement wetland sites is initiated by request from the Project Development & Environmental Analysis (PDEA) Unit to the Manager of Right of Way to gain access by an entry agreement, [FRM9-C](#) Wetlands Agreement for Entry, onto potential sites for evaluation. The purpose of the evaluation is to determine that hydric soils, water levels and other wetland characteristics are present for restoration on a particular potential site and that impacts on adjacent community lands can also be evaluated. Potential sites are required to be located within the same river basin as the proposed roadway project. The request for evaluation will be assigned to the appropriate Division Right of Way Office by the State Negotiator.

The Division Right of Way Office will verify the correct ownership of the proposed mitigation site(s) and will contact each property owner to determine their willingness to sell the proposed mitigation site to the Department of Transportation and to obtain a written entry permit from the property owner so a site evaluation can be conducted. Owners adjacent to the proposed mitigation site, on occasion, may be involved in order to gain access to the site and for borings to determine water levels and flow adjacent to the proposed site. Upon securing the entry permit, the Agent will immediately notify PDEA through the State Negotiator's Office.

Upon completion of a favorable site evaluation, the Right of Way Unit will be requested to have the site(s) appraised and obtain an option to acquire the site(s). Often the acreage of the site for the purpose of obtaining an option must be computed by the Right of Way Agent subject to change/revision after a property/site survey has been completed. A survey may be completed after a specific unit monetary value for the computed/estimated acreage has been agreed

upon and the property owner(s) has duly executed an option for the mitigation site.

Generally, the Department will not acquire wetland mitigation sites by condemnation or under the threat of condemnation. These acquisitions will be considered voluntary transactions and the Department will not acquire any sites if negotiations fail to result in an amicable agreement with the landowner and if the landowner had been advised accordingly in writing. Under the provisions of [49 CFR 24.101\(a\)\(1\)](#) which deals with voluntary transactions, the Department is not limited by the current appraisal waiver threshold.

In some instances where a proposed wetland mitigation site lies adjacent to a highway project, the Department may elect to acquire that site under the threat of condemnation. Since acquisition, in this case, would not be considered "voluntary", normal acquisition procedures, including an appraisal, would be followed.

For the case of a partial acquisition from a tract of land for a mitigation site, the entire property is to be appraised on a before and after basis in order to determine its value. In most zoning jurisdictions, wetlands will contribute to the density use of the uplands and the sale of the wetlands could contribute to a lesser density usage for the remainder.

Funds for the purchase of wetlands may either be provided through a normal project Right of Way Authorization or by a specific parcel authorization. In the case of specific parcel funding, an estimated value of the mitigation site acquisition will be necessary prior to Board of Transportation approval of the funding. A state wide project number has been established solely for the appraisal of specific parcels to expedite the acquisition of a site. In all cases, a wetland mitigation parcel will have a WM suffix assigned for future identification, for example: R-2245 001WM.

9.03 STREAM MITIGATIONS

Under the provisions of the Clean Water Act and North Carolina Statutes, the Division of Water Quality of the North Carolina Department of Environment and Natural Resources and the United States Army Corps of Engineers require the Department of Transportation to procure conservation easements to mitigate the impacts of highway construction upon streams and other valuable natural areas. The methods of mitigation or compensation for impacts to streams include:

1. Restoration. Restoring a previously damaged stream channel, such as one that has been channelized and straightened for drainage, to a more natural condition to replace the values of the stream being impacted.
2. Enhancement. Enhancing a functional stream by enlarging an existing buffer zone, or diversify the vegetative community, thereby increasing the habitat for fish and wildlife.

3. Preservation. Acquiring a conservation easement, purchase, or in other ways protect a stream to prevent further damage.
4. Any combination of these activities.

Conservation Easements for stream mitigation purposes will be acquired in accordance with Uniform Act requirements and more specifically under the provisions of [49 CFR 24 101\(a\)\(1\)](#) which deal with voluntary transactions. On stream mitigation projects, the Department will not acquire any property by condemnation or under the threat of eminent domain. In other words, the acquisitions will be voluntary transactions and the Department will not acquire any property if negotiations fail to result in an amicable agreement with the landowner. Since the acquisitions are voluntary, the Department is not limited by the current appraisal waiver threshold. All conservation easements for the stream mitigation program may be valued and acquired by the appraisal waiver procedure.

Acquisition procedures for stream mitigation sites are outlined as follows:

1. The Project Development and Environmental Analysis (PDEA) Unit will identify lands which are ideal for mitigation activities and so advise the Right of Way Unit of the specific river basin where these potential mitigation sites will be located. Work order numbers for appraisals and mitigation project acquisition activities will be established and furnished through PDEA and Project Management. A work order along with a TIP number having a "WM" suffix will be established for all pre-negotiation activities up to and including appraisals. For acquisition activities, i.e., making offers, negotiations, settlement and closure of claims, a TIP project number will be established which will carry a "WM" suffix and will be parcel specific. For example: R-2245WM 001
2. The Area Appraiser responsible for the river basin area where the identified mitigation sites are located will obtain a market study for each county or combination of counties in which the sites are located. The purpose of the market study is to determine fair market unit land values (square footage, linear footage and/or per-acre units) which can be applied to any potential mitigation site in that county. After completion, the market study and their values will be reviewed and approved for negotiation purposes by the Area Appraiser or designated Review Appraiser.
3. After receipt of the market studies, the studies will be forwarded to the appropriate Division Right of Way Offices which would handle acquisition while a summary of the unit values for land (square footage, linear footage and/or per-acre units) for each of the counties located in a particular river basin will be forwarded to the PDEA Unit. A PDEA representative will make initial contacts with landowners of identified sites to see if the landowners are willing to participate in the Stream Mitigation Program. A Stream Mitigation Program Brochure, [FRM9-D](#) will be presented to each landowner. In addition the PDEA representative will give each landowner who agrees to participate in the Stream Mitigation Program a letter of intent, [FRM9-E](#) which informs each landowner of

the acquisition process and the unit value which will be the basis of compensation to be paid for the conservation easement after the final design of the of the mitigation site has been completed. The landowner will be requested to sign the letter of intent acknowledging that he/she agrees to participate in the Stream Mitigation Program. Copies of signed letters of intent for a mitigation site will be forwarded to the appropriate Division Right of Way Office for use in negotiations. As stated in the letter of intent, participation is entirely voluntary and the landowner will not be pressured or forced to participate in the program. If the landowner(s) decides not to participate in the program, no further efforts to acquire the property on that particular mitigation site will be made and acquisition for other potential sites will be pursued.

4. After a commitment by the property owners to participate in a designated mitigation site, as evidenced by signed letter of intent, PDEA will proceed with a mitigation design plan for that particular site. Upon receipt of the completed plans for a mitigation project from PDEA, the Agent will designate the parcel numbers for a particular mitigation project. Since several mitigation sites may be included in a single work order, it is suggested that the mitigation sites be numbered in the order received or worked and the parcel numbers be assigned by letters to a particular site number. For instance, the first site received or worked would be numbered 001, the second would be numbered 002, and so forth, with the parcels being designated alphabetically by letter like so: 001A, 001B, 001C, etc., for the first site; 002A, 002B, 002C, etc., for the second site and continuing as such.
5. After designating the parcel numbers for a mitigation site plan, the Agent will provide the names and parcel numbers of the claimants on each particular mitigation site to the PDEA representative who will, in turn, obtain authorization, from Project Management, for acquisition of the parcels and establishing a TIP work order for charges of acquisition activities.
6. While awaiting authorization for acquisition, the Agent will prepare a Right of Way Claim Report ([FRM4-N](#)) for each parcel using the required mitigation easement areas and the land unit values from the market study for the county in the appropriate impacted river basin. After approval of the Right of Way Claim Report by an appropriate reviewer, other than the person preparing the report, or by supervisory personnel, the Agent will be ready to make an offer to the landowner upon receipt of authorization for acquisition of the mitigation easements.
7. Prior to contacting the landowner, the Agent will prepare a [FRM9-F](#) (Summary Statement/Offer to Purchase Real Property) in which the amount of the approved offer amount will be stated along with a required statement informing the landowner that the Department will not acquire the property if negotiations fail to result in an agreement.
8. In addition, the Agent will prepare a description of the easement area to be acquired from the mitigation project design plans furnished by PDEA. A survey prepared by the Location & Surveys Unit may be required. This description will be inserted into or attached to a Conservation Easement form prepared by the Attorney General's Office.

The PDEA representative will outline the provisions and conditions for that easement and provide the Agent with a draft Conservation Easement to be finalized before the offer is made to the landowner. The Agent should have verified the ownership of the land being acquired for reference in the Conservation Easement.

9. After authorization of acquisition, the Agent, accompanied by the [PDEA](#) representative, will contact the landowner making the offer to purchase the mitigation easement area and presenting the landowner with the Summary Statement/Offer to Purchase Real Property form. A Stream Mitigation Negotiating Diary form, [FRM9-G](#), will be used for this contact and any subsequent negotiating contacts and includes affidavits for the Agent to sign prior to the initial contact and after settlement.
 - a. If the landowner agrees to settle, the Agent will have the landowner execute the Conservation Easement. Acquisitions will be handled in the same manner as regular highway right of way acquisitions, but excepting any condemnations.
 - b. If all owners of a mitigation site execute Conservation Easements thereby completing acquisition for that particular stream mitigation project, the Agent shall submit Final Reports for the processing of these claims for payments and finalizing the acquisition. In the event all owners do not convey the needed Conservation Easements for the stream mitigation project, all acquisition activities for the stream mitigation project shall cease, upon approval by the PDEA representative. All owners will be notified that the mitigation project cannot be completed and any executed Conservation Easements shall be returned to them. No claims for payments should have been processed for payment.
10. The final report packets will contain the Final Report Checklist, Final Report forms, Stream Mitigation Negotiating Diary, Summary Statement/Offer to Purchase form, Conservation Easement, completed Taxpayer ID form, Right of Way Claim Report, Letter of Intent, any administrative adjustment approvals, mitigation site plans and other pertinent negotiating documentation.
11. The check should be mailed to the landowner with the appropriate cover letter and the claim closed in the same manner as similar right of way acquisitions. In the event the check is delivered to the landowner by the Agent, the Warrant Delivery Certification (see [FRM12-D](#) in this Manual) should be modified to delete the statement regarding the proration and refund of property taxes by the Department. As mentioned in the Stream Mitigation Program brochure, property tax reductions may be available to the landowner with the conveyance of a conservation easement but this availability would solely be determined by the county tax offices. No tax proration is made by the Department for stream mitigation easements.

9.04 CONTAMINATED RIGHTS OF WAY

In North Carolina, [General Statute 133-40](#) prohibits the State from acquiring contaminated property without approval from the Council of State and Governor, however the North Carolina Department of Transportation was exempted from this requirement.

To that end, the Department of Transportation has instituted procedures described below to insure that North Carolina laws are followed.

1. Division Agent and [GeoEnvironmental Section](#) receive notice of Final Design Field Inspection.
2. Division Agent receives right of way authorization for the project and creates a "Contamination" folder on the S Drive under the appropriate parcel folder and saves the recommendations and contamination report on the S Drive in this folder.
3. Kickoff meeting with the Consultant firm (if r/w acquisition is outsourced).
4. After making initial contact with suspect parcels (to verify ownership), during the appraisal request process, the Division Agent requests by email that the GeoEnvironmental Section to begin their assessment of suspected parcels. Copy the State Negotiator and appropriate Assistant State Negotiator.

Appraisal: All parcels will be made on the basis of being "as clean" or if contamination did not exist.

5. The [GeoEnvironmental Section](#) informs the Division Agent directly of parcels of concern at the time they receive the request for assessment of subject parcels.
6. At the same time, the Division Agent identifies potential remnant purchases (if any) to the GeoEnvironmental Section.
7. The GeoEnvironmental Section provides completed recommendations within 90 days of the request to the State Negotiator via the rownotify@ncdot.gov email address. These recommendations must include the nature and extent of contamination for each parcel. Depending on timing and access to a specific parcel, the recommendations may be delayed until after project authorization.
8. The State Negotiator or State Property Agent will forward these recommendations to the appropriate Division Right of Way office and/or Consultant firm and also copies the appropriate Area Negotiator.

Environmental Reports, Offers, and Withholding of Clean up Funds: The GeoEnvironmental Section will provide a report and recommendation to the Right of Way Unit indicating if contamination is present and whether the right of way should be acquired through Fee Simple or by permanent easement. The report will also indicate the amount, if any, of cleanup costs that should be deducted from the offer and settlement. The offer to the property owner for proposed right of way containing contaminated soils will be the amount of the approved "as clean" appraisal less the recommended clean-up costs. Prior to the offer for acquisition of the right of

way, it is desirous that the property owner be served with a Notice of Regulatory Requirements (NORR) by the Waste Management Division of the Department of Environmental Quality so the party responsible for the contamination is identified. If the property owner satisfactorily cleans up or remediates the soil contamination in accordance with regulatory procedures prior to the acquisition of the right of way, by settlement or condemnation, the offer to the property owner will be based on the approved "as clean" appraisal. The deduction is the estimated cost of cleanup or remediation of the soil contamination in the proposed right of way established by the GeoEnvironmental Section based on the levels of contamination derived from an environmental investigation of the site and from costs of past remediation of contaminated claims. If the actual cost of remediation exceeds the amount of the deduction for the estimated clean-up cost, no additional deduction or amount will be expected to be paid by the property owner. If the actual cost of remediation is less than the deduction for the estimated clean-up cost, the difference in these amounts will be refunded to the property owner either by direct payment in the event of a previous settlement or an additional deposit if the claim is still in litigation. In negotiating a claim involving soil contamination in the right of way and involving a deduction for clean-up costs, the Agent will advise the property owner of this procedure for acquisition of right of way involving soil contamination on the initial contact and will state the amount of the clean-up cost deduction on the summary statement/offer letter to the property owner. The Agent will also advise the property owner, that the Department will only clean up the property to the extent necessary to construct the project. The responsibility for any remaining contaminated material will be retained by the property owner and not the Department. If settlement is reached with the property owner, a statement will be placed in the special provisions section of the easement stating the amount of the deduction and the circumstances necessary for a refund. **Note that where the GeoEnvironmental Section recommends that the right of way be acquired by permanent easement, permanent easement will be used whether the right of way is acquired by settlement or condemnations.** This will minimize the Department's liability for the contamination.

Contaminated Remnants

If the GeoEnvironmental Section has provided a report on a parcel and that parcel involves an uneconomic remnant, the agent should also obtain a GeoEnvironmental recommendation for the uneconomic remnant. The Department shall not acquire an uneconomic remnant that is contaminated.

The property owner may wish to clean up the site, remove underground fuel tanks, and obtain a **Notice of No Further Action** from the Department of Environmental Quality for the remnant. Upon which time, the site cleanup report and the **Notice of No Further Action** letter should be forwarded to the GeoEnvironmental Section for review. Upon review, the GeoEnvironmental Section will submit recommendations to acquire the remnant property.

Therefore, note on the [FRM10-B](#), the following clause applies to remnants:

Any offer to purchase a remnant/buildable lot is conditioned upon the remnant/buildable lot being environmentally clean prior to the conveyance to the Department. You may be required to provide the Department with a release from the appropriate environmental agency stating that all

contaminants have been remediated and/or removed to their standards.

Definition of Contamination: On the GeoEnvironmental Right of Way Recommendations, the parcels will be listed in order and identified in the parcel heading as either “Contaminated” or “Not Contaminated”. “Contaminated” may require the withholding of funds for cleanup and/or acquisition as Permanent Easement depending on the nature and extent of contamination.

All parcels identified in the parcel heading as “Not Contaminated” are to be treated as not contaminated, even if the body of the report indicates detection of some contamination at levels below the NCDENR action level and are to be acquired as normal.

It is the position of the Department of Transportation that groundwater contamination encountered on parcels continues to remain the responsibility of the property owner and the Department does not consider this issue in the acquisition of rights of way, but will be addressed in the Right of way Recommendations if needed.

9.05 UTILITIES - GENERAL

The Department of Transportation has the responsibility for maintaining the rights of way of highways under its jurisdiction as necessary to preserve the integrity, visual quality, operational safety, and function of the highway facility. The Department has various degrees of authority to regulate the use of utilities on highways, and the utility companies also have various degrees of authority to install their lines and facilities on the rights of way of public roads and streets. Since the location and manner in which utility facilities cross or otherwise occupy highway rights of way can materially affect the visual quality, safe operation, and maintenance of the highway, it is necessary that such use and occupancy be authorized and regulated.

In order for the Department to regulate the use of highway rights of way on all highways under its jurisdiction, uniform policies and procedures have been established stipulating the conditions under which existing, proposed, adjusted, or relocated utilities may be accommodated. These policies and procedures are contained in a policy statement entitled, [POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS OF WAY](#). The intent of these policies and procedures is to establish and administer reasonable uniform utility accommodation practices in the interest of developing and preserving safe roadsides and of minimizing possible interference and impairment to the highway, its structure, visual quality, safe operation, and maintenance. These policies and procedures are not made part of this Manual; however, copies of or information pertaining to these policies and procedures may be obtained from the Utilities Unit in Raleigh.

The before-mentioned accommodation policies are for use by both the Department and utility companies in accommodating utilities on all state-maintained roads and highways.

9.06 THE UTILITIES UNIT

With the exception of utility conflicts on maintenance projects, certain state-financed projects and some Division (DDC & DDL) projects, the Utilities Unit will administer the adjustment and relocation of utility conflicts on all highway projects. The Utilities Unit is within the Field Support Unit of the Division of Highways and is led by the State Utilities Manager.

In the early planning phase of the project, agents from the Utilities Unit will determine the utility right of way status; conduct on-the-site utility inspections, determine what utilities exist, which utilities must be relocated and where. They will recommend to the Design Engineer, utility easements (PUE, AUE, and DUE) to be shown on the plans. At the Initial Field Inspection for the project, the utility agents should be present, and any needed utility easements should be shown on the project plans. If either the utility agent or their representative is not present, or needed utility easements are not shown on the plans, the Assistant State Negotiator should be contacted. The Division R/W Agent should examine the utility easements shown on the project plans just as he/she would any other design feature, and give input as to the cost and effects of the easements shown.

It is the objective of the Right of Way Unit to acquire parcels needed for utility relocation early in the r/w schedule, so that utility relocation may be accomplished prior to commencement of construction. Prior to right of way acquisition beginning, the Utility Unit will provide the Right of Way Unit with the specific parcels needed and the date by which they should be acquired, in order to facilitate utility relocation prior to construction. The Division R/W Agent should make every effort to obtain these utility parcels according to the project schedule.

The Division Right of Way Agent will be responsible for initiating utility contacts on maintenance (Secondary Road improvements). (Procedure to Follow)

9.07 EXISTING AND PROPOSED UTILITIES TO BE SHOWN ON CONSTRUCTION PLANS

With respect to the use and occupancy of the highway right of way by utility facilities which must be retained, installed, adjusted, or relocated to accommodate the construction of all highway projects to be let to contract, regardless of who bears the cost of installation, adjustment, or relocation, the construction plans of the project should show all known existing utilities and all temporary and proposed permanent relocations. With the exception of aerial service taps or service drops, connecting wires and vertical clearances should be shown on existing and proposed aerial crossings. Existing and proposed underground utilities should be identified as to location, approximate depth, and material, and the size shall be indicated on water, gas, sewer, oil, or other pipelines. Upon receipt of utility relocation plans from the utility company or municipality, the Utility Agent, in conjunction with the Utility Engineer of Design Services, will make arrangements to incorporate all existing and proposed utility locations in the highway plans and will prepare utility special provisions for incorporation in the contract proposal. Separate utility conflict plans will be prepared by Design Services.

9.08 UTILITIES - AUTHORIZATION TO BEGIN WORK

It is desirable to authorize the performance of utility work at the earliest date possible so that utilities may be adjusted to clear construction prior to advertisement date of the highway contract. On some projects, however, this is not possible since certain phases of the utility work must be carried on in conjunction with highway work. Utility relocation work should be authorized promptly after procurement of plans, estimates, and agreements.

9.09 RAILROADS

The Department policy regarding railroads is contained in the [NC Administrative Code](#), the NC General Statutes, and the 1998 NCDOT Railroad Policy.

On All projects (whether primary or secondary, TIP or Division Designed, Enhancement, Safety, Bridge Maintenance, acquired by a Municipality, or otherwise) the Division R/W Agent will examine each plan sheet and list any plan sheets showing a railroad track or railroad r/w. The Division R/W Agent will then, by email, advise the Railroad Surface and Encroachment Section in the Engineering Coordination & Safety Branch of the Rail Division, (**hereafter referred to as the Rail S&E Section**), with a cc to the project engineer, if a railroad track or railroad r/w is shown on any plan sheet. The Division R/W Agent lists any sheet that shows a railroad, not just where he or she perceives the railroad is affected by the project. This email should be sent prior to the first Field Inspection, or prior to commencement of r/w acquisition should no field inspection be held. For non-TIP projects, the Division R/W Agent should scan and attach plans sheets to the email.

The Rail S&E Section will examine the plan sheets, determine the following, and advise the Division R/W Agent how to proceed:

1. If the railroad is active or not active
2. Whether a conflict with a railroad exists.
3. If a conflict exists, how the conflict is to be resolved.
4. Any actions needed by the Division R/W Agent to resolve the railroad conflict.

The Rail S&E Section will determine will course of action needed to resolve all railroad conflicts and the Division R/W Agent is directed to assist the Rail S&E Section, with resolving the railroad conflict.

There are several basic conflicts a project may have with a railroad:

1. Improvements to highway that crosses the railroad at-grade
2. Grade Separation (Overpass or Underpass) where the rail r/w is not being moved
3. Grade separation (Overpass or Underpass) requiring the relocation of the railroad r/w
4. Highway Project parallel to rail where proposed highway r/w or easement encroach into railroad r/w

Whether a railroad is active (operating) or not active is a key determining factor is how the matter is resolved. Generally, if a railroad is **NOT** active, the railroad will be treated as any other property owner and the Right of Way Unit will be asked to acquire the proposed right of way/easements in the normal manner. The Rail S&E Section can assist by providing contact information for the railroad.

If the railroad is active, the Rail S&E Section will provide the Division R/W Agent with directions as to any actions the Right of Way Unit may need to take.

1. Improvements to highway that crosses the railroad at-grade

Where any project crosses a railroad at grade, whether the crossing is an existing one or on new location, the Rail S&E Section will secure the agreement, and there will be no additional Right of Way Unit involvement. If railroad crossing signals are in conflict as a result of proposed project, the Crossing Safety Engineering Unit within the Engineering Coordination & Safety Branch of the Rail Division will facilitate an agreement for any signal work.

2. Grade Separation (Overpass or Underpass) where the rail r/w is not being moved

Where a railroad grade separation is involved in most cases, all plans, estimates, and agreements with the railroad company are handled through the Structure Design Unit. If the Right of Way Agent has a question concerning this they can contact the Rail S&E Section.

3. Grade separation requiring the relocation of the railroad r/w,

In limited cases, a highway project will necessitate the realignment, relocation of track outside the existing boundaries of the railroad right of way. In these cases replacement right of way will be required, as shown on the plans. This should be discussed at the first Field Inspection. This replacement right of way will be acquired by the Right of Way Unit. The Division Right of Way Agent should seek guidance from the Assistant State Negotiator to ensure the replacement right of way is acquired using the proper instruments. Once the project is built and the railroad has been relocated, the newly acquired railroad right of way will need to be transferred from NCDOT to the Railroad. Once the Right of Way Unit has acquired the needed area, the Right of Way Unit with assistance from the Rail S&E Section if needed to coordinate with the Railroad's property office to facilitate any conveyance of property from the Department to the Railroad and if appropriate any property from the Railroad to the Department.

4. Highway Project parallel to rail r/w where proposed highway r/w, easement or encroach or needed

Where construction will run parallel to and encroach on active railroad right of way, a parallel encroachment or right of way agreement will be necessary. The Rail S&E Section will determine if the area in conflict can be obtained by encroachment agreement or acquisition by a right of way agreement is needed. If the area in conflict can be secured by encroachment, the Right of Way Unit will have no additional involvement unless notified. If the area in conflict requires acquisition by Right of Way Agreement, the assigned representative of the Rail S&E Section will discuss the claim with the Right of Way Unit. The responsibilities of the Right Of Way Unit will be as follows: Preparation and request of an appraisal, or Value Finding, for the area in conflict within the Railroad Right of Way, a CADD drawing and description of the take, a current valid right of way agreement, and Federal Tax form ([FRM4-M](#)). The Rail S&E Section representative, upon receiving appraisal/Value Finding and prepared right of way agreement, will negotiate the claim with the Railroad. Once a

settlement is reached, the Right Of Way Agent will be notified and requested to process a final report for the claim, record the instrument and close the claim.

The right of way agent should forward a copy of the recorded instrument to Rail S&E Section. As a General Rule, NCDOT can condemn railroad right of way, but not within active (operating) railroad right of way - this is usually the area 25' each side of the track.

Municipalities and Railroad Conflicts

On a project where a municipality is providing/acquiring the right of way and a parallel encroachment agreement with a railroad company is required, special handling of the agreement may be necessary. The Division R/W Agent should follow the above procedure and involve the Municipality in the discussions.

Adverse Possession against Railroads

Railroads may have possession of their property by Deed, Easement, or Charter. It is possible where a railroad r/w is held by easement or charter, that the underlying fee ownership is held by another party. This interest should be acquired separately from the railroad's interest. However, there is no adverse possession against a railroad per [NC General Statute 1-44](#), which states:

“No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right-of-way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right-of-way, depot, station house or place of landing, by any statute of limitation or by occupation of the same by any person whatever”.

Acquisition of R/W for Railroad Extensions

In recent, there have been projects administered by the Department, where right of way for the extension of rail lines was acquired. In these cases, the appropriate instruments should be used – the Right of Way Unit is currently updating its instruments to allow for this type of facility.

Abandoned Railroad R/W

Occasionally, the Right of Way Agent may question as to whether a railroad right of way has been abandoned. The Agent should contact the Rail S&E Section to assist with that determination. In cases where it has been verified the railroad right of way has been abandoned, the Agent should seek guidance from supervisors in determining who can claim

the abandoned right of way.

Railroad R/W Limits

Occasionally, the Right of Way Agent may have questions as to railroad right of way limits. The Agent can contact the Rail S&E Section to assist with that determination.

9.10 DIVIDED HIGHWAY CROSSOVERS

The right of the Department of Transportation to separate the lanes of traffic with barrier medians or channelization islands is valid exercise of the police power of the state. The Agent has no authority to agree to establish a crossover in the median at any specific point. Any attempt to specify the location of a crossover in any right of way deed or easement during the negotiation for right of way could be construed as vesting a property right in the crossover, which is not permissible.

It should be noted by the Agent that the Department is increasingly eliminating and modifying crossovers. Additionally, while the plans for the project may show a crossover to be constructed in connection with the project, the Department may relocate, modify, or eliminate the crossover entirely for reasons of public safety or to maintain the capacity of the highway to move traffic. No promise should be made regarding any crossover.

Any concerns over the location of a crossover, or the lack of a crossover should be discussed with the Division Engineer and/or Division Construction Engineer.

9.11 PARKING ON CURB AND GUTTER SECTIONS

On urban projects where curb and gutter is being installed, property owners ask the question of whether or not they may park on the street adjacent to the proposed curb or on the existing right of way. The Agent shall give no assurance either verbally or in writing that such parking will be permitted. The abutting property owner should be advised that at any time after the completion of the project, the State or the municipality, if within corporate limits, by the exercise of its police power, may prohibit or otherwise control on-street parking in the interest of public safety or the movement of traffic.

9.12 DRIVEWAY ENTRANCES

On non-controlled access highway projects, it has always been the policy of the Department, where feasible, to restore private driveways where existing driveways have been disturbed by

construction, and this condition is taken into consideration by the appraiser in making his appraisal. Generally, provisions for this work are incorporated in the project plans. With reference to driveways to commercial establishments, special treatment is given to such driveways, and, generally, required channelization islands are shown on the project plans. The Right of Way Agent should familiarize himself with the Department's publication entitled Minimum Standards for Entrances to Highways from Commercial Establishments. This publication contains the ordinance of the Department pertaining to these driveways and sets out the objectives, requirements, and design features of commercial driveways. The ultimate decision on the size and location of driveways rests with the Division Engineer.

Where changes in grade necessitate the reconstruction of a driveway involving construction operations beyond the limits of the right of way described in the instrument, and where no prior permission has been given, the Department must have written authority from the property owner to perform construction work outside of the right of way limits. In these instances where an agreement cannot be reached with the property owner for additional right of way or construction easement(s) for the project involving the reconnection of a driveway and condemnation of the property is necessary, the construction of the project is to proceed without restoration of the driveway, unless the owner will request, in writing, the driveway construction and relieve the Department from further responsibility. The Agent should be on the alert to spot situations where terrain features, the size or shape of remaining property, location of buildings, excessive grades, design features, or excessive cost will make it impracticable or impossible to restore a driveway to a usable condition.

If a driveway cannot be reconnected due to construction limitations, the Agent should note this on the Appraisal Summary Sheet at the time he requests the appraisal. If in doubt, the Agent should consult with the Resident Engineer or with Roadway Design personnel before having the property appraised or making any commitment with the owner to restore or reconnect a driveway. The proper time to check these situations is on the Field Plan Inspection where engineering personnel are present so that any required changes may be shown on the plans before they are completed.

In those cases where improvements are being made within the existing right of way where a driveway is affected and no additional right of way is required, it is suggested that the Agent prepare a temporary deed of easement describing the existing right of way in the agreement and including the following provision permitting the reconnection of the driveway:

The undersigned property owners, recognizing that the Department of Transportation has the right to make adjustments to the road within the existing right of way, and further understanding that such adjustments may disrupt our driveway, do hereby request that the Department of Transportation enter upon our lands outside of the right of way to the extent as is necessary to reconnect our driveway, and we will have no claim as a result of the reconstruction of said driveway. **(See [clauses](#) in the Forms)**

In those cases where additional right of way is being acquired and a permit is necessary for constructing the driveway outside of the right of way, the following provision is to be inserted in the applicable deed (with the exception of the full control of access form):

The undersigned owners further request that the Department of Transportation enter upon our lands outside of the right of way described herein to the extent as is necessary to reconnect our driveway, and we will have no claim as a result of the reconstruction of said driveway. **(See [clauses](#) in the Forms)**

On rare occasions a property owner will request that a new driveway entrance or an existing driveway entrance be specified by station numbers on non-controlled access facilities. If it is necessary to specify the driveway entrance by station number on non-controlled facilities in order to settle a right of way claim, the Agent is cautioned to obtain concurrence of the location of the driveway from the Division Engineer or his appropriate representative to insure the driveway entrance can be installed at the specified location. On limited control of access facilities, changes in driveway locations should be approved by Roadway Design after obtaining concurrence from the Division Engineer.

The specifying of driveway locations on non-controlled highways by station numbers is discouraged since their locations may be established as "contract access points" which would not be subject to the Department's or a municipality's "police power" and would have to be acquired if they were to be eliminated for sufficient reason at a future time. The preferred method of designating driveway locations is by showing the locations on the project plans.

9.13 GROWING TIMBER

The North Carolina Supreme Court has held that the taking of a right of way includes everything on the right of way, which includes the timber.

When acquiring right of way, the appraiser will have considered the value of the timber in his appraisal and the amount of the approved offer to the property owner will include compensation for both the land and the timber.

The Department discourages the practice of removing timber and trees from the proposed right of way (prior to acquisition by the Department) for a highway project. This is due to ecological reasons and for selective cutting for landscape purposes. Accordingly, the Agent will discourage the retention of timber or trees by the property owners. The Agent may not be able to stop an owner from cutting timber or trees before the Department has control over the property; however, the owner should be informed that the appraisal will be adjusted if the timber is removed. If an owner is insistent about retaining timber, the Agent should contact the State Negotiator for further instructions.

The Right of Way Agent may not give permission to any property owner, nor other owners to remove trees/landscaping from the existing right of way. Retention of landscaping purchased by the Department is addressed in Section 9.14 below

In regard to the right of the Department to remove tree limbs that are overhanging the right of way, the Attorney General's Office has ruled that the Department has this legal right. When the Department acquires the right of way, the Department also acquires, with certain

limitations, the overhanging limbs even though the base of the tree may be off the right of way. 25 American Jurisprudence, Section 297, page 589, states in part:

"Municipal authorities have the right to trim trees standing on private property where their branches extend over the highway, if they obstruct the way or endanger, hinder, or incommode persons traveling therein. It is not necessary, in order that trees constitute such an obstruction as to authorize their removal, that they actually impede or stop travel. But the right of removal is not absolute. It must be exercised with prudence and reason, and not wantonly, willfully, or arbitrarily, and the extent of the cutting must not exceed reasonable necessity."

Page 590, Section 298, states in part:

"The weight of authority is to the effect that the decision of the public authorities in the matter of necessity for removal will be reviewed by the Courts only for the purpose of determining whether such authorities have acted arbitrarily or have exceeded their statutory powers in the premises, and every reasonable intendment of good faith and honesty will be indulged in favor of their decision. Under this rule, the Courts will not ordinarily review the decision of the administrative authorities on the question of whether it is necessary to make a certain improvement or to remove certain trees in making it."

The Attorney General's Office further points out that no notice of the intent to trim the trees is necessary, but that the Department must be careful not to act arbitrarily, wantonly, or oppressively. It appears from the law that the abutting owner owns the limbs; therefore, they should be offered to him.

If a property owner has removed timber or trees, or has sold the timber to another party for removal from right of way, after the timber or trees have been conveyed to the Department with the right of way area, the Agent should request direction from the State Negotiator and the Attorney General's Office regarding recovery of the value of timber which has been removed from the right of way.

9.14 SHRUBS AND LANDSCAPING

In cases where the right of way or easements being acquired is landscaped, the appraiser will take into consideration the contributing value of the shrubs and landscaping to the property, and the amount offered to the property owner will cover these items. The Agent cannot grant permission to the property owner to remove the shrubs and landscaping items from the right of way unless a retention value has been determined and proper credit given to the Department in the purchase of the right of way from the property owner.

If the shrubs are retained by the owner, the terms of the sale should be set forth in the same manner as the sale of other improvements. In selling a dwelling for its removal from the right of way, it is also understood that the purchaser will have the right to remove only the shrubbery located immediately around the foundation of the dwelling.

9.15 GROWING OR UNHARVESTED CROPS

As a general practice, growing crops upon right of way or borrow acquired will be considered and paid for as a part of the realty. In those cases where crops have been planted upon the right of way subsequent to the preparation of the appraisal and prior to the date of taking, consideration can be given to the value of the growing crop at the time of the taking with the value being based primarily upon the cost incurred in planting and cultivating the crops up to the time of taking. In those cases where the owner elects to wait until the crops in the adjoining fields have matured to make a settlement, the Agent will take into consideration the yield in the adjoining fields, deducting from the allowance the cost of harvesting and marketing, plus any cost that might be involved in cultivating between the date of taking and the time of maturity. The Agent should fully document his calculations in arriving at the value of the crops, unless a separate value has been placed on the crops by the appraiser. On secondary road improvements, the property owners may be compensated for growing crops destroyed in connection with the improvement.

9.16 FENCES

Where right of way is acquired and fences are located within the right of way area, the amount offered to the property owner should include the taking of his fences. Where fences are located upon the right of way that has been acquired, the fences become the property of the Department and quality fences of substantial value are to be disposed of in the same manner as other improvements taken within the right of way; that is, they should be resold to the property owner for the retention value, by public sale or by demolition.

On widening projects, the Agent may use the following procedure:

If an investigation of the project reveals a considerable amount of fencing within the additional right of way to be acquired, the Agent may inform the Area Appraiser that he is not to consider the taking of the fences. The Agent will arrive at a value for the fences by reviewing bid prices for removal of fences on recent projects in the area, establish a removal price for the various classifications of fences, and apply the unit price to the number of feet of fence involved on each individual parcel, being careful to determine that the cost of removal does not exceed the value of the fences.

Upon receipt of the approved appraisal for the particular parcel involved, the Division Agent will write to the Raleigh Office recommending an increase in the appraisal, being careful to set out in the letter the justifications for the increase and stating the type and amount of fence involved and the unit price for the removal.

A determination as to the linear feet and type of fencing to be moved on a project where right of way acquisition is involved is to be determined by the Division Right of Way Agent. Generally, fences will be removed and reset by the roadway contractor only in those cases where, in the opinion of the Division Right of Way Agent, they should be reset in order to maintain safety and good public relations. The Division Right of Way Agent will furnish to the

Raleigh office, along with and at the time demolition items are submitted, a list of the different classifications and types of fences that are to be removed and reset. The list should show the linear feet of each type of fence to be relocated, grouping barbed wire fence in one classification, meaning that three, four, or five strand barbed wire would all be classified barbed wire. The Agent should tie down the fence by parcel and station numbers on this list. Electric fencing should be classified by itself, as well as chain link fencing, board or panel fencing. A copy of this fencing list should be furnished the Division Engineer one month prior to the advertising date for the project. There may be instances where the Division Right of Way Agent may need the assistance of the Division Engineer in the preparation of the list of fences to be included in the roadway contract. It is suggested that the Division Right of Way Agent contact the Division Engineer promptly upon receipt of the current "Tentative Letting List" and determine which projects on the list involve fence removal and if the Division Engineer's assistance will be needed in the list of fencing items to be included in the roadway contract. It is pointed out that the Department resets fencing of this nature only in rare instances to maintain public relations. The Agent should not have the Department reset any fencing for which the value has been included in the appraisal and previously paid for by the Department.

Insofar as practical, the Department will fence projects with full control of access. The Agent should be very careful to examine this type project to determine those parcels on which pasture fencing will be severed. This is very important for the protection of livestock located in these pastures. The Agent should prepare a preset fencing list on this type project, listing the parcel number, claimant, and survey stations where the project fencing is to be preset prior to the time the pasture fencing is disturbed. The Agent should forward this list of fencing to be preset to the Raleigh office at the time he submits the demolition items on the project. The Agent should also use caution when dealing with claims involving pasture fence severance on other type projects.

On projects where the property owners are donating the right of way, such as secondary road improvements, the Department should reset the fencing. If a project of this nature is let to contract, fence resetting items, should be included in the contract. On additions to the State Maintenance System, the Department does not reset fencing.

9.17 CLAIMS WITH RADIO STATIONS

Claims involving radio stations can be involved due to the fact that the antenna systems can be disturbed when construction appropriates a portion of the radial system (underground copper wires extending like the spokes of a wagon wheel from the base of the antenna). There are also other factors which can affect the broadcasting ability of the radio station.

When it becomes necessary to acquire right of way from radio stations on Federal aid projects, or if unusual circumstances are encountered on other type projects, a conference should be held with the Area Appraiser regarding the estimated damage to the property and other unusual factors. The Area Negotiator should be present at this conference and a report shall be written to the State Negotiator so that all concerned may be advised as to the proper procedure to follow in appraising and acquiring the property.

9.18 PARKS, PLAYGROUNDS, AND HISTORICAL SITES

In some instances a proposed project will affect a park, playground, or other public recreational facility. The Agent should make an investigation of these areas on the preliminary field plan inspection and mark any park, playground, or other recreational areas on the plans. The Agent should write a separate letter or report giving full particulars on the affected site and forward this report to the State Negotiator, along with the preliminary field inspection report. This is very important due to Federal and State regulations concerning these facilities. The Agent should also bring to the attention of the State Negotiator any historical site that will be appropriated or otherwise affected by the project.

9.19 RETAINING WALLS

Retaining walls constructed for the purpose of confining construction limits to a reduced area in order to avoid or reduce property damage should be justified by appraisals. In other words appraisals should be secured on the basis of constructing the project with a wall and constructing the project with normal cut or fill slopes. An estimate of constructing the wall should be obtained from the Roadway Design Department and the estimated cost of constructing the wall be compared with the difference in property damage with and without the wall. If justified, any recommended plan changes should be submitted through the State Negotiator.

9.20 ORNAMENTAL WALLS

As a rule ornamental walls surrounding a property are considered to be realty and should be appraised as a part of the realty. The disposition of such walls should be the same as that for any other improvement; that is, they should be cleared from the right of way. In some instances an ornamental wall may serve as a retaining wall, and if its replacement can be justified by alternate appraisals, such walls may be re-erected by the Department within the limits of the new right of way; however, in those instances where a wall is replaced, it should not be paid for as a part of the realty. The Agent should inquire of Roadway Design as to the type of replacement wall to be installed and so advise the property owner.

9.21 SPRINGS AND WELLS

If a spring or well is located within the right of way that is to be appropriated, the appraisers will have taken into consideration its value and any damage resulting from the taking of the water supply will be reflected in the appraisal. The Agent should negotiate accordingly. There will be some instances where a spring will be boxed over when it is under a roadway fill and the property owner could continue to use the water that would be discharged through the drainage system installed by the Department. In these instances the Agent is not to make any reference to the continued use of such spring water by written agreement, inference or

otherwise, since this could be construed as giving the property owner a right in the right of way. The Agent should bear in mind that there is no degree of certainty as to the quality of water or continued flow from a capped over spring. Where a spring or well is located near the outer limits of the right of way and a slight change can be made in the right of way boundary so as to eliminate the taking, a recommendation should be made to the Raleigh office for a reduction in the right of way to eliminate the taking of the water supply. Where there is a possibility of damage to water the property owner may raise the question of the possibility of damage to his water supply by reason of the road construction and may refuse to reach an agreement unless some provision is made concerning this feature. Under no circumstances is the Agent to place a provision in the deed to the effect that the Department of Transportation will replace the water supply in the event it is damaged or fails. If during the course of constructing the project the Department of Transportation, its successors or assigns, performs any act that directly results in the failure of or damage to the water supply, that such act would constitute the basis for a new claim."

In those situations where a water supply is damaged due to the construction of a project and no prior disposition has been made, the Agent should furnish the State Negotiator with a written report giving full particulars of the situation. The State Negotiator will then have the complaint investigated by the Geology Section of the Department. If the Geology Section determines that the source of water has been damaged by construction, the procedure to follow is:

1. When possible, let the owner get at least two estimates from well-drilling companies. The names of reliable well-drilling companies in the local area can be furnished to the owner, but refrain from recommending a particular well-driller so no one in the drilling or boring business can charge favoritism against the Department.
2. When the property owner does not have the means to obtain the necessary estimates, a Right of Way Agent may perform this function. The Agent's judgment will have to be used in this instance.
3. The Department of Transportation check is to be made payable only to the property owner, and the property owner will be required to sign a release upon delivery releasing the Department from any past, present, and future responsibility with regard to the loss or damage to water supply.

9.22 SECONDARY ROAD ACQUISITION/CONDEMNATION PROCEDURES

The Department does not pay for right of way on secondary road improvements or road additions which will become secondary roads on the Department of Transportation maintenance system. In general, the dedication of right of way for the improvement, paving or addition of a road to the maintenance system enhances the value of the adjoining property and offsets the loss of property dedicated as right of way.

The various easement forms to be used on secondary road improvements and additions are discussed in Chapter 7.

It is the policy of the Board of Transportation that for the paving of unpaved secondary roads, often referred to as secondary road improvement projects, the property owners shall dedicate at no cost to the Department of Transportation adequate right of way for construction and maintenance. In certain areas where a secondary road intersects a major highway, the Department may purchase a sight distance for the safety of the traveling public. The Department may also defray the cost of moving any existing fences or buildings, or other improvements within the proposed right of way, as well as for crop damage and utility relocations.

With regard to secondary road additions to the maintenance system, it is the policy of the Department that all property owners shall dedicate at no cost, adequate right of way, which is clear of all fences, buildings, structures and utilities, for future maintenance. The Department will not pay or reimburse the costs to move any existing fences, buildings, structures, utilities or other items from the proposed right of way.

The right of way to be dedicated by property owners shall be a minimum width of fifty (50) feet for connecting roads and a minimum of forty-five (45) feet for dead end roads. The Department will not improve or pave a secondary road unless there is adequate right of way. The right of way may be (1) dedicated by executing appropriate agreements conveying the right of way to the Department of Transportation (2) dedicated by a recorded plat (3) existing right of way by maintenance, plat, or deed.

In certain circumstances, if one or more property owners refuse to dedicate the necessary right of way in order to pave a secondary road, the Board of Transportation may allow the remaining property owners to provide the funds to cover condemnation costs incurred by the Department. This decision will be based upon the provisions in NCGS 136-44.7(c).

Before condemnation will be considered, the following should occur:

- (1) The Department shall make efforts to acquire the right of way for at least 6 months.
- (2) The Division Engineer will exhaust every effort to resolve the right of way problems in the surveying process
- (3) Property owners along the road will negotiate with their dissenting neighbors and attempt to resolve the right of way issues. This could include purchasing the right of way and then dedicating it to NCDOT.

If the provisions of NCGS 136-44.7(c) are met, and other property owners are willing to provide the necessary funds to indemnify the Department against the costs incurred in the condemnation and litigation of the claim, the following steps may be taken:

It is important for the Division Right of Way Agent and District Engineer to determine all right of way and easements needed at this point. For example, if utilities are to be relocated, a PUE or AUE may be needed in addition to the secondary road right of way.

The Division Engineer will request the Chief Engineer for the Division of Highways to have an item presented to the Board of Transportation's Secondary Roads Committee recommending approval to condemn certain parcels where property owners have refused to dedicate or donate the right of way necessary to complete the construction or improvement of a specific road. A copy of this request should be forwarded to the Division Right of Way Agent and to the Manager of the Right of Way Unit.

Upon receipt of the Division Engineer's letter, the Manager of Right of Way will request an agenda item for the Board of Transportation's approval of the Secondary Roads Committee's recommendation to proceed with condemnation on the specific secondary road improvement project.

After Board approval to proceed with condemnation, The Manager of the Right of Way Unit will notify the Division Right of Way Agent of the parcels approved for condemnation.

The assigned right of way agent will then meet with those property owners (depositor) willing to provide the funds for the condemnation action, and explain the acquisition/condemnation process, potential costs, and timeline.

If the parties are willing to proceed, the agent should have one of the property owners (depositor) carefully read and sign [FRM9-J](#) (Escrow Agreement – Part A), and provide a bank or certified check in the amount of \$2,500.00. **A separate [FRM9-J](#) and check are needed for each parcel to be condemned.** As stated in the form, this amount is to be used for administrative costs, such as appraisals, title reports, surveys, etc. The signed [FRM9-J](#), check, and [FRM9-i](#) are to be submitted to the Raleigh Right of Way Office, where the funds will be held in escrow.

At this point, the agent shall conduct an initial contact with the property owner who would not grant the right of way. The parcel is to be added to the BSIP system and an appraisal and title report ordered. The agent should include with the appraisal request, a plat or map provided by the District Engineer of the property suitable for condemnation purposes. Should the property owner indicate a desire to grant the right of way for no consideration, the agent should provide the appropriate right of way agreement, and once executed and recorded, request return of the escrowed funds, using the original [FRM9-i](#), and noting any expenditures.

When the approved appraisal has been received by the Agent, the Agent should re-contact the depositor who provided the original funding (\$2,500.00) and advise them of the appraised amount, if any.

If the approved appraisal is benefits, the agent may then make the offer to the property owner who would not sign. The Department does not negotiate with property owners for secondary roads right of way. Therefore, if the owner will sign for benefits (-0-), a standard secondary

road right of way agreement may be used at this point, and once recorded, the agent will request return of any unused escrow funds, using the original [FRM9-i](#), and noting any expenditures.

If the approved appraisal is not benefits (any amount above \$0.00), the agent should have the depositor provide the amount of the approved appraisal in the form of a bank or certified check payable to NCDOT, and execute [FRM9-K](#) (Escrow Agreement – Part B), submitting these with [FRM9-i](#) to the Raleigh Right of Way Office. **The agent should not make any offer without obtaining a signed Escrow Agreement ([FRM9-K](#)) and a bank check or money order in the amount of the appraised appraisal.**

Once escrow agreement and funds are submitted, the agent may make the written offer (FRM10-B) to the owner who would not sign.

The Department does not negotiate with property owners for secondary roads right of way. Therefore, if the owner will sign for the offer amount, the agent should provide [FRM7-C](#) with an appropriate description and [FRM4-M](#), and once these are executed, the agent will submit a settlement final report. After recording and closing, the agent will request return of any unused escrowed funds, using the original [FRM9-i](#), and noting any expenditure.

If the property owner will not grant the right of way for the offer amount (whether it is benefits or a higher amount), the agent will proceed with a condemnation final report including all items necessary for condemnation: Condemnation review form, current title report, plat sufficient for filing condemnation, abstract, etc.

After condemnation has been filed, the Division and District Engineers will be advised that right of way acquisition has been completed and that construction or improvement can commence.

For those condemnation cases being handled by the Attorney General's Office, any offers or proposals for settlement will be directed to the Chief Engineer.

Once all of the condemnation cases have been resolved, the agent should request return of any unused escrow funds, using the original [FRM9-i](#), and noting any expenditures.

9.23 PERSONAL PROPERTY NOT TO BE ACQUIRED

No items of personal property are to be acquired by the Department through negotiation. An owner of personal property may abandon personal property under the Loss of Tangible Personal Property section on Chapter 15. Also refer to Chapter 4. Mobile homes are generally considered personal property. An exception will be those mobile homes considered "vintage" meaning that due to their age and/or physical condition local ordinances or regulations will prohibit them from being relocated. Units meeting this criteria would be considered the same

as "tenant-owned improvements" and be acquired in accordance with Chapter 10.

9.24 STREAM CHANNEL CHANGES

Frequently it is necessary to change the course or channel of a stream by reason of highway construction. This may be handled in one of two ways. Where the channel change is parallel to the roadway, the right of way width may be increased sufficiently to incorporate the channel change. The preferred way is to secure a drainage easement for any portion of the channel change that may lie outside of the normal width of right of way. Through farm lands where the stream may be used for watering stock or as a source of irrigation water, control of access lines should be carried on the highway side of the stream so that the Department will not be faced with paying additional damages for depriving the owner of access to the water.

9.25 USE OF STREAM BRIDGE SPANS FOR PRIVATE ROAD CROSSINGS

In some instances it may be desirable to allow abutting property owners to utilize stream bridge spans for private road crossings of controlled access facilities, if so, such use must be taken into consideration in arriving at the appraised damages. In the field inspection of a parcel that is to be severed by a controlled-access facility, the Agent will inspect carefully for any proposed bridges, culverts, or other means of access under the project for either stock or vehicle. If there is any question as to the amount of space available between the end of the structure and the edge of the stream bank, the Division Engineer should be called upon to stake out either the structure or fill so that accurate information can be given to the appraiser. The Summary Sheet should not be turned over to the appraiser until full information is available as to access that can be provided under the project, and this information should be indicated in a cover letter with the summary sheet. Should such use be permitted, the right of way deed should contain a clause somewhat as follows:

It is agreed herein that the grantor may establish a private road _____ feet in width under the highway bridge across _____ Creek (river) with the express understanding that such use will not interfere with or cause damage to the bridge, will be subject to limitations imposed by vertical and horizontal clearances under the bridge, natural erosion of the stream bank, or by high water in the stream, and that all maintenance of such road will be the obligation of the property owner.

9.26 LIVESTOCK OR VEHICULAR UNDERPASSES

Frequently in farming areas where pasture land is severed by a highway, the property owner requests that he be provided with a cattle pass or in the case of larger farms severed by controlled access highways, the owner may request a vehicular underpass. If, in the judgment of the Right of Way Agent such request should receive consideration, he should refer the

matter to the State Negotiator for further consideration. If it is decided that the request has merit, appraisals should be made on the basis of damage to the property with and without the cattle pass or vehicular underpass, and if the difference in the two appraisals indicated that the structure could be justified, an estimate of the cost of the structure should be secured from the Design Department before making a final decision. If the cost of the structure is less than the severance damage without the structure, the request should be made to the State Negotiator to include the structure in the plans for the project provided that settlement on this basis can be reached with the property owner. Plans are not to be changed to add an underpass without a settlement being reached with the property owner unless expressly authorized by the Raleigh Office.

In some instances, it will be found that the plans for the project will call for a drainage structure of sufficient size to be used as a cattle pass, or that by slightly increasing the size of a drainage structure it can be used for both purposes. The agreement should provide that its use be subject to limitations imposed by drainage through the structure and further provide that its use as a cattle pass will terminate at such time as the property on one side or the other of the road changes to a use no longer requiring a cattle pass. The agent should be particularly careful not to make any commitments for the permissive use of a drainage structure as a cattle pass where it is known or can be ascertained that the drainage structure will stand too deep in water for use as a cattle pass for any appreciable length of time.

9.27 PAYMENT TO PARTIES OTHER THAN THE OWNER OF RECORD TITLE

On occasions in reaching an agreement with a property owner, it will be his or their desire that all or a part of the consideration be paid to someone other than the owner. **The Department will not make checks payable to anyone other than those owners having and interest in the property (including lienholders, mortgage holders, county tax office), or the closing attorney.** A [FRM4-m](#) is required for all payees. [NCGS 143B-426.40A](#). (Assignments of claims against State) is the statutory guidance for the Department.

In general, checks are made payable to the persons/entity in the heading of the instrument. However, the DOT cannot place more than one taxpayer on a single check (a married couple is considered a single taxpayer and both names can be on a check using one of the ss numbers)

If there are multiple owners, or if the check needs to be paid to the closing attorney due to payoff of mortgages or taxes), a provision needs to be placed in the Special Provisions specifying the payees and amounts.

In general:

For Trusts, the check should be paid to the Trust (not the trustee), unless the instrument says pay the check to the closing attorney.

For Political Entities, the check should be paid to the Entity (not the Mayor, Chairman, etc.), unless the instrument says pay the check to the closing attorney.

For Churches, the check should be paid to the Church (not the trustees, or minister) unless the instrument says pay the check to the closing attorney.

Examples (Paid to Closing Attorney, must have signed tax for closing attorney, typically the same payee name as the AG Office uses when the closing invoice is paid):

It is understood and agreed that the total consideration set forth above shall be made payable to name of closing attorney or firm (must use what AG has on file) and after satisfaction of all taxes, liens, encumbrances on this parcel, the remaining balance shall be disbursed in accordance with the Grantors' directions, and the Grantors shall have no claim against the Department as a result thereof.

Examples (Split Payment, must have signed tax for each payee):

It is understood and agreed that out of the total consideration set forth above, \$ enter amount shall be made payable to name of payee and \$ enter amount shall be made payable to name of payee and the Grantors shall have no claim against the Department as a result thereof.

Examples (Paid to a single payee when there are multiple grantors, must have signed tax for payee):

It is understood and agreed that the total consideration set forth above shall be made payable to name of payee and the grantors shall have no claim against the Department as a result thereof.

For example, the heirs of an undivided estate may wish the compensation to be paid to one of the heirs or, in the case of a multiple ownership, it may be that the grantors wish to be paid separately. In such cases, the Right of Way Deed should contain a special provision setting forth the manner in which payment is to be made. For example:

It is understood and agreed by the grantors to this conveyance that the herein recited consideration of \$ _____ is to be paid to _____.

or,

It is understood and agreed by the grantors to this conveyance that \$ _____ of the herein recited consideration of \$ _____ is to be paid to _____

The Agent is to secure a taxpayer identification number [FRM4-M](#) from whomever the payee is. The Agent should encourage the above procedure on claims involving a large number of grantors on one instrument as this will facilitate check issuance and closure of the claim.

9.28 ACCESS TO ISOLATED TRACTS

In constructing highways, certain properties may be isolated and left without legal or practical means of access. This may be caused by the imposition of control of access in the design of the project or on non-controlled access projects where the construction of excessive cuts or fills would make it virtually impossible to restore driveway entrances to the highway, within the frontage of the property. Access to certain properties thus isolated may be restored by either the construction of frontage or service roads or by the construction of private driveways. The construction of any frontage or service road must be justified from an economic standpoint. On interstate or other expressway projects involving control of access, at the plan inspection stage, an inspection should be made by the Area Appraiser, and it may be found on this inspection that the need for a service or frontage road is so obvious that it will not be necessary to go to the time or expense of securing comparative appraisals; however, where there is a doubt as to the need for a frontage road, it must be justified by securing appraisals of the properties involved both with and without a frontage road. If the difference of these two appraisals indicates that a service road could be justified, the plans and estimates of the cost of the service road should be secured from the Roadway Design Department. If the difference between the damages to the property in an isolated condition and the property with access provided is greater than the cost of constructing the service road with the cost of maintenance being considered, then the service road should be constructed. If not, the property should be left in an isolated condition and damages be paid accordingly. Refer to Sections 5.061 and 5.062 of the Manual which further explain this procedure and areas of responsibility. On non-controlled access highways where a driveway cannot be restored in a usable condition because of cuts or fills, it may be that the driveway can be constructed to a grade point across adjoining property. If so, it will be necessary to arrange with the adjoining property owner to convey a driveway easement to the property owner that is cut off.

9.29 BREAKING CONTROL OF ACCESS

As a part of a project, access control may be broken to provide driveway entrances and service road connections to the roadway. This will not be done on interstate projects allowing direct access to the roadway proper. On some projects access control will be broken to allow one access point per property or parcel. In those instances where a break in access control is allowed to provide access to the roadway and one access point can serve two properties, the Agent will prepare the right of way description and break the control at stations perpendicular to the roadway proper so that access may be provided to the two properties at the intersection of the common property line between the two properties with the right of way boundary of the project proper. This description of access should be described in [FRM7-B](#). In no instance should an Agent provide a break in the control of access without the prior approval of the State Negotiator.

9.30 REPURCHASE OPTIONS

Should a property owner request that the conveyance of right of way contain a provision to repurchase the property if it is no longer needed for highway purposes, the Agent should inform the property owner that he/she has no authority to enter into such agreement. The release of acquired rights of way and easements (surplus) is handled by the Department's Right of Way Disposal Committee through a request from the Division Engineer. Once a right of way or easement has been recorded, or condemnation case settled and the judgment recorded, it cannot be released without review by the Committee.

9.31 HISTORICAL PROPERTIES

The Agent should insure that any properties considered to be historical or appear to have historical significance should be fully reviewed on the Preliminary Field Plan Inspection. The NCDOT PDEA Unit should be the lead group investigating historical properties and any mitigation NCDOT has to take as a result of the project. Acquisition of historical properties should be coordinated through the State Negotiator.

9.32 SEPTIC SYSTEMS AND REPAIR AREAS

If it is suspected that a portion or all of a septic system is located within the Right of Way or easements to be acquired, the Agent should coordinate an inspection of the property with the County Health Department and the property owner. On those projects where there is a potential for numerous septic system issues it may be in the Department's best interest to hire consultants (counties permitting) to locate the septic systems and repair areas, secure permits, and obtain/provide estimates for needed repairs. The Agent should first discuss the use of consultants with the Division Right of Way Agent, who will then contact the Consultant Coordinator within the Right of Way Unit for further assistance (the agent should not secure the services of a consultant without first discussing with the Division Right of Way Agent and the Consultant Coordinator within the Right of Way Unit). Forms [FRM9-L](#) and [FRM9-M](#) will be utilized in these situations.

The scope of the inspection is to locate the septic system, all lines, and the repair area, if any, and determine (1) if the system or repair area is in conflict with the project and (2) if sufficient area remains so a septic repair permit can be obtained, or if the repair area is taken, if there is room for a replacement repair area. The agent or consultant should coordinate with the property owner to obtain a permit from the county. The permit should be included with the appraisal request. If a consultant is utilized, they should also provide a cost estimate to accomplish any repair work necessary. If no estimate is provided, the Appraiser will obtain an estimate to repair/replace the septic system and include it in the appraisal report as a cost to cure item. The Agent will negotiate accordingly. The property owner is responsible for the

actual repair/replacement of the septic system.

It is acceptable to use a cost to cure estimate on a R/W claim report provided the R/W claim report (R/W and cost to cure) does not exceed \$25,000.00.

In those situations where the septic system can be repaired/replaced but there is no repair area remaining after the repair/replacement, the Agent must make the Appraiser aware of this situation. The Appraiser will determine if there is damage to the remaining property due to the lack of repair area. The Agent should inform the property owner that due to the lack of new repair area he is eligible for relocation assistance. Should the property owner choose to remain on the property and not accept relocation assistance, then a clause releasing the Department from further responsibility with regard to the new septic system should be included in the special provision section of the R/W deed.

The following clause is to be inserted under special provision on R/W agreement for claims when the Department has paid the property owner cost to cure to repair/replace the septic system.

It is understood and agreed that the above settlement amount includes compensation for the undersigned owner(s) to repair the septic system. It is understood and agreed that the entire cost of said repair is covered in the above settlement and the undersigned owners and their successors and assigns release the Department from any further claims for damages pertaining to payment for the repair.

In those situations where a septic system is damaged due to the construction of a project and no prior disposition has been made the following procedures apply.

1. The owner or if necessary the Right of Way Agent should secure at least two estimates for septic system repair/replacement. The names of reliable companies in the local area can be furnished to the owner, but refrain from recommending a particular company.
2. The Department of Transportation check is to be made payable only to the property owner; the property owner will be required to sign a release upon delivery releasing the Department from any liability with regard to the septic system.

In situations where it is possible to extend and connect a sewer service to the property said extension of sewer service should be coordinated with the Department's Utilities Unit.

A cost to cure item for the connection of the sewer to the property owner's home will be part of the appraisal. The responsibility of the connection will be the property owner's.

It is the responsibility of the Division R/W Agent to furnish to the Resident Engineer at the Preconstruction conference a list of claims for which the Department has compensated the property owner for septic repair/replacement.

On claims for which the Department has paid the owner cost to cure for septic repair/replacement, the Division Agent is responsible to furnish a letter at closing to the owner stating it is their responsibility to have septic repairs completed promptly to avoid conflicts with utility work and/or construction.

9.33 PONDS

During the project design phase, efforts should be made to avoid retention ponds, if possible. Retention ponds are those ponds required by code or law to use the property for a specific purpose. If right of way or easements impact a retention pond, the right of way agent should first consult with the Division R/W Agent to determine if any prior redesign work for the pond has taken place. The Division RW Agent may contact the Design Unit and the PDEA Unit for this information. If no redesign work has been accomplished, the Division Right of Way Agent may contact the Geo-Environmental Unit. The Geo-Environmental Unit may agree to contract with one of its on-call consultants to investigate the pond and provide a plan to re-configure the pond so that it may remain in compliance. The consultant should provide a plan and a cost to accomplish the plan. The cost can then be incorporated into the appraisal as a cost to cure. The property owner will be responsible for selecting a contractor and paying for any work.

The clause similar to that below is to be inserted under special provision on R/W agreement for claims when the Department has paid the property owner cost to cure to repair the pond.

It is understood and agreed that the above settlement amount includes compensation for the undersigned owner(s) to repair the pond located at Survey Station _____, It is understood and agreed that the entire cost of said repair is covered in the above settlement and the undersigned owners and their successors and assigns release the Department from any further claims for damages pertaining to payment for the repair.

For further information, the Agent or Division RW Agent may contact the Assistant State Negotiator or State Negotiator.

9.34 CONDOMINIUMS, HOMEOWNER ASSOCIATIONS, AND COMMON AREAS

Condominium Common Area Claims

The eminent domain provisions [of N.C. General Statute, Chapter 47C](#), the “North Carolina Condominium Act” ([47C-1-107](#), “Eminent Domain”) applies to condominium developments created before or after October 1, 1986, unless the declarations for the condominium provide otherwise. Generally, where only common areas or elements are being acquired, the negotiations will be only with the Association and the proceeds paid only to the Association and not to the individual condominium unit owners.

Common Area Claims With Other Planned Unit Developments (other than condominiums)

Most other developments, other than condominiums, are governed by [N.C. General Statute, 47F](#), the “North Carolina Planned Community Act.” This Act has a similar provision for eminent domain acquisitions of common area ([N.C.G.S. 47F-1-107](#)) so that generally, where only common areas or elements are being acquired, the negotiations will be only with the Association and the proceeds paid only to the Association and not to the individual lot owners. It should be noted, however, that the eminent domain provisions of Chapter 47F, the “North Carolina Planned Community Act” only apply to those planned communities, as defined by the Act, created on or after January 1, 1999. Unfortunately, the General Assembly did not include a provision in Chapter 47F that would make the eminent domain provisions applicable to planned communities created before January 1, 1999.

When Right of Way Agents are acquiring portions of a development’s common areas, special care should be exercised. The Agent should seek the guidance of the Division Agent, and, if necessary, assistance from the Attorney General’s Office depending on the facts of the particular claim. The Agent should first review the title opinion to make sure that the association is the record owner of the common area. There are some developments where the common area has never been conveyed from the developer to the association.

The Department of Transportation has had several recent decisions in the North Carolina Court of Appeals and the North Carolina Supreme Court cases relating to acquisitions of common areas. It should be particularly noted, however, that the decisions in both *Department of Transportation v. Stagecoach Village* and *Department of Transportation v. Fernwood* dealt with acquisitions of common area from older developments that were not subject to either the N.C. General Statute, Chapter 47C, the “North Carolina Condominium Act” or to Chapter 47F, the “North Carolina Planned Community Act.” The court decisions in these cases, therefore, may not apply to the circumstances of later acquisition claims.

Common area claims may arise with condominium developments or with other planned unit developments or subdivisions having homeowners’ associations. In either case, the Agent should obtain from the Department of Transportation title attorney or from the owner, a copy of the recorded Declaration of Covenants for the development as they relate to the creation and operation of a Homeowners’ Association. These will likely have provisions dealing with a sale or condemnation of common areas. In addition, the agent should obtain a copy of the Articles of Incorporation and the By-Laws of the Homeowners’ Association which may have additional provisions, such as notices of meetings, quorums, or written approvals required to convey common areas.

If the areas are to be acquired by deed to the Department, the Agent should obtain from the association a copy of the minutes of the association meeting at which the transfer or deed of the common area was approved. In most, if not all cases, the Declarations, the association By-Laws, or the Articles of Incorporation of the association have provisions requiring the recording in the Register of Deeds of the written approval of a

certain percentage of the lot owners in the association before a deed to common areas can be given by the officers of the association. Therefore, these documents should be reviewed to determine the approval process that is required to be followed. The Agent should obtain a copy of any such recorded approvals by the lot owners required by the association documents.

In addition, there may be instances where statutory provisions (N.C. General Statute, Chapter 47C, the "North Carolina Condominium Act" and Chapter 47F, the "North Carolina Planned Community Act") require an approval by a higher percentage of the association's members than may be set out in the association documents.

Chapter 10 NEGOTIATION

The primary aim of negotiating should be to develop trust, mutual respect, and rapport with the property owner so that acquisition may be amicably completed with the payment of just compensation. The development of this mutual respect and rapport with the property owner should commence with the initial contact with the owners and should be carried through the offer of just compensation, follow-up contacts and completion of acquisition. Negotiation calls for salesmanship tempered with high ethical standards. The success of subsequent negotiations may be accomplished much more easily if proper preparation and ground work is laid during the initial contact with the property owner.

10.01 CONFLICT OF INTEREST

Ethics and conflicts of interest are previously discussed in Chapter 1 of this Manual. It is essential that there be no actual or perceived conflict of interest between the personal, business, or family interests of a Right of Way Employee/Consultant and the interests of persons from whom right of way must be acquired. Any Right of Way Employee/Consultant, including supervisors, should disqualify himself/herself from involvement in any right of way claim under the following circumstances:

1. A personal or family relationship or involvement in the ownership or sales history of the land involved.
2. A participating business association with the owner or any other party of interest in the property to be acquired.

The Right of Way Employee/Consultant should explain the nature of the conflict to their Supervisor when recusing themselves from the matter.

As stated in Chapter 4 of this Manual, R/W Agents, prior to making initial contacts, must sign the affidavits in [FRM4-C](#).

10.02 CONDUCT OF THE NEGOTIATOR

The Right of Way Agent is expected to understand, reflect and represent at all times, in a straightforward and respectful way, the interest of the Department of Transportation. The Agent must recognize and believe that the aim of the Department is to accomplish the acquisition of right of way on a project for the good of all, with the least damage to the least number of persons, and being

consistent with justifiable expenditures of public funds. The Agent must also recognize that there can be differences of opinion as to whether this duty is being properly discharged and that no citizen owes the state more than the broad obligation of good citizenship. An Agent should render friendly, well informed, sincere, and attentive consideration to the views of the persons with whom he/she deals. Insincerity, veiled sarcasm, or rudeness is equally out of place in public contacts.

The R/W Agent may occasionally meet a property owner with whom there may be a personality clash. In such circumstances, it may be desirable for the Agent to inform their supervisor and request that another Agent be assigned the parcel in question; however, this should not be used by the Agent as an excuse or pretext to avoid a possible unpleasant or difficult assignment. The Agent has perhaps the best opportunity of any Department of Transportation representative to create favorable and friendly feelings toward the Department. Patient and courteous treatment of the public, and affected property owners, in particular, is an essential feature of the Department's right of way program, and personal habits and conduct of the Agent must at all times reflect favorably upon the Department. In most cases, the Agent's contact with an owner is probably the only contact that individual has ever had with a representative of the Department of Transportation. To the owner, the Agent is "the Department of Transportation" and should conduct himself/herself accordingly. The Agent, in negotiating with a property owner, should confine discussions to the subject claim in question and not discuss the claims of other property owners along the project. Punctuality in meeting appointments and following up promptly on any requests for additional information requested by the owner is essential.

10.03 PREPARATION FOR NEGOTIATION

It shall be the responsibility of each Agent to become familiar with all factors which will contribute to an effective and efficient negotiating effort. The Agent should carefully review the project plans for a particular parcel, study the appraisal, and view any comparable sales that may have been used by the appraiser as the basis for value. If there are any aspects of the appraisal that are not understood they should be clarified with their supervisor. The Agent should also examine [FRM4-H](#) and the Preliminary Title Certificate ([FRM6-C](#)), if available. The Agent should reexamine the subject property on the ground to see if there have been any changes in its condition since the time of the initial contract with the property owner. Careful study of all information at hand and a thorough familiarization with all aspects of the project and the subject property are essential to a successful negotiation.

On each project, a schedule ([FRM3-B](#)) will be developed by the Division R/W Agent, Area Appraiser, and Area Negotiator as outlined in Chapter 3 of this manual. The schedule outlines the various acquisition activities from the

beginning of negotiations to the letting of the project to construction. These project schedules are located on the s (groups) drive. The Agent shall adhere to the project schedule in order to complete specific acquisition activities as scheduled.

10.04 ORDER OF NEGOTIATIONS

After receipt of plans and authorization, and a preliminary study of the project, the Agent should form a plan as to the order in which negotiations should be carried out. The Agent should discuss the project priorities with the Division R/W Agent and Area Appraiser.

Initial Contacts must commence promptly on properties involving improvements, displacees, utility easements, and other priority parcels.

The purpose of this promptness is to permit persons who have to relocate ample time to do so and to comply with a 90-day notification and schedule requirements. In addition, utility relocation may commence prior to the project letting, and therefore acquisition of parcels needed for utility relocation must be accelerated. Improvements need to be acquired and inspected and asbestos abated prior to demolition.

It is also important to begin negotiations promptly on involved properties which will entail prolonged negotiations. In some instances an individual may own several properties on a project and it may be desirable to wait until all appraisals have been completed on these parcels so that one negotiation can be made with the property owner for all properties rather than handling them individually. Of course, the Agent's activities will be controlled to some extent by the complexity of claims, whether right of way claim reports ([FRM4-N](#)) were utilized, the order in which Appraisal Requests were turned over to the Appraisal Section.

10.05 ACCOMPLISHING WORK AND MEETING DEADLINES

Once negotiations have commenced, the Agent should pursue acquisition as promptly as possible. High-pressure tactics are not to be employed and the owner must be given a reasonable length of time to consider the offer. It is good policy to give the owner at least one week in which to consider the offer before making a second contact. The time between the initial offer and the second contact is dependent on circumstances and the desires of the owner. The Agent should schedule the time and date of the next negotiating contact with the owner at the time of the current contact. Telephone or email contacts are necessary in establishing appointments; however, the telephone or email should not be used as a substitute for a personal contact with the claimant during negotiations. In no

event shall the time of condemnation be advanced or deferred, or any other action be taken, solely for the purpose of coercing the owner to agree on the price to be paid for the right of way being acquired.

Quite often, the longer a negotiation is prolonged the more difficult it is to reach a settlement. The Agent should always be attentive to the attitude of the owner and aware of the schedule so as not to prolong the negotiations. It is very important that all acquisition schedules are met in order that the award of contracts is not delayed.

10.06 NEGOTIATING DIARY

The Negotiating Diary is also discussed in **Chapter 4** of this Manual. For each contact with a property owner, there should be an entry in this diary. Each entry should be dated and signed by the Agent who contacts the property owner. An entry should be made for all contacts, whether there is a visit to the property owner's home or place of business, a contact in the Agent's office, or a contact by telephone or email. The entry should briefly and clearly set out the place of contact; persons present; the subject of discussion; any conclusions reached; the amount of any offer; replacement housing payment, if applicable; counter-offers by the owner; the attitude of the property owner and other pertinent facts and information which may have a bearing on the negotiations of the claim. The diary should be kept up to date and entries made immediately upon completion of a contact with an owner. The diary will prove invaluable, if, for some reason, it is necessary to change negotiators prior to completion of a negotiation. The diary may also be helpful should any problems or issues arise during construction.

The diary may also be of value if should negotiations fail and it becomes necessary to enter into condemnation. The diary should be placed in the final report folder on the s (groups) drive. In the case of condemnation, where contacts with the owner or his/her attorney are made, new diary sheets should be completed and placed in the final report folder and emailed to the AG's Attorney handling the parcel.

10.07 UNECONOMIC REMNANTS

An uneconomic remnant is the portion of a parcel that remaining outside of the proposed right of way, which the Department has determined has little or no utility or value to the owner. The Department of Transportation is obligated to make an offer to purchase all uneconomic remnants. Uneconomic remnants can be purchased only with the consent of the owner and cannot be condemned.

The Department's Reviewing Appraiser will indicate on the Review Certification

[FRM5-S](#) whether a remainder meets the criteria as an uneconomic remnant.

Where the Reviewer checks the box on the [FRM5-S](#) and the remnant value is \$50,000 or less, either the Consultant Project Manager or the Division RW Agent may approve the purchase of the remnant. So, on a parcel being acquired by a consultant, the Consultant Project Manager should prepare and sign the memo and proceed with the offer. And on a parcel where DOT staff is acquiring the right of way, the Division RW Agent should prepare and sign the memo and proceed with the offer.

Where the Reviewer checks the box on the [FRM5-S](#) and the remnant value is OVER \$50,000, the Area Negotiator or above must approve the purchase of the remnant. So, on a parcel being acquired by a consultant, the Consultant should prepare the memo and send it to the Area Negotiator, and upon receiving the signed memo back, proceed with the offer. And on a parcel where DOT staff is acquiring the right of way, the Division RW Agent or RW Agent should prepare the memo and send it to the Area Negotiator, and upon receiving the signed memo back, proceed with the offer.

If the remnant box is NOT checked and an agent wants DOT to consider offering to purchase it, they should contact the Area Negotiator and discuss the situation.

A copy of the memorandum will be placed in the parcel file and named Gencor-remnant letter.

Factors to be considered in determining that a remainder is an uneconomic remnant include the size or shape of the remainder, control of access as it may affect the remainder, cuts and fills as they may affect access to a remainder, the economic effect on a business operation, the effects on a farming operation, loss of water/sewer, and the effect on residential and all other types of property due to right of way acquisition. The utility or value to the owner must be considered as well as its appraised value. In some cases, a remainder having a substantial value could be considered an uneconomic remnant depending upon its utility or value to the owner. Any questionable situations involving uneconomic remnants should be discussed with the Assistant State Negotiator.

On those uneconomic remnants where known contaminants or other environmentally hazardous materials or waste may be located, an offer to purchase the uneconomic remnant shall be made; however, the offer to purchase shall be conditioned on the property owner providing the Department with a release from the appropriate environmental agency that all contaminants have been remediated and/or removed to their standards and the remnant is environmentally clean prior to the conveyance of the remnant (this clause has been added to the [FRM10-B](#) offer letter). Uneconomic remnants should be purchased using a NORTH CAROLINA GENERAL WARRANTY DEED ([FRM7-J](#)).

In making the offer to purchase an uneconomic remnant, Paragraph (C) of the Summary Statement/Offer to Purchase letter ([FRM10-B](#)) should be marked appropriately. In processing the claim for payment, on the Final Report, the GL Code shall be marked with NP as the value of the uneconomic remnant shall be made non-participating for Federal-Aid funding. A residue card and sketch ([FRM14-W](#) and [FRM14-X](#) in **Chapter 14** of this Manual) will be added to the Final Report folder. If a property is split and there are multiple uneconomic remnants, each remnant that is purchased should have its own residue card/sketch.

10.08 BUILDABLE LOTS

When the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder of the property is determined to be a buildable lot, after completion of an evaluation of the property for relocation assistance benefits, the Department will offer to purchase the entire property. In computing the replacement housing payment in such instances, the replacement housing payment will be based on the sum of the fair market value of the remaining buildable lot and the acquisition cost of the partial taking. In making the offer to purchase the entire property from the owner where a buildable lot is involved, Paragraph (C) of the Summary Statement/Offer to Purchase letter ([FRM10-B](#)) should be marked appropriately. To facilitate the processing of the claim for payment, a copy of the transmittal letter showing the value of the buildable lot should be included in the Final Report folder and the value of the buildable lot will be non-participating for Federal-Aid funding (the GL code shall be marked with NP). A residue card and sketch ([FRM14-W](#) and [FRM14-X](#) in **Chapter 14** of this Manual) will be added to the Final Report folder.

10.09 RETENTION VALUES OF IMPROVEMENTS

The current policy of the Department regarding the acquisition of improvements within the right of way is to afford the property owner the opportunity to retain the improvements, whenever the schedule and circumstances permit. The retention of an improvement is based on the condition the improvement will be removed from the right of way at no expense to the Department. The Agent will advise the property owner that the improvements may be retained or repurchased from the Department for a retention value and this transaction would require the execution of a bid form and the submittal of a performance deposit to finalize the retention. The retention value(s) for the improvements will be provided to the owner upon request and in accordance with Chapter 14 of this Manual. The Summary Statement/Offer to Purchase form contains a provision regarding the retention of improvements and this provision should be noted to the owner when the offer is made.

10.10 AMOUNT OF OFFER

The offer of just compensation as established by the approved appraisal is required to be set forth in writing to the property owner on the Department's Summary Statement/Contingent Offer to Purchase Real Estate ([FRM10-B](#)). Settlement will be negotiated on the exact amount of the approved appraisal.

It is good policy to make the offer to the owner or his representative orally and then present the Summary Statement confirming the offer. The Summary Statement/Offer to Purchase Real Estate letter is to be dated and signed by the Agent who makes the offer. All paragraphs must be completed or N/A inserted for information that does not apply.

In the preparation of the offer letter, the amounts, the acreages, and the improvements within the acquisition must match the claim report, appraisal, appraisal adjustment memo, or Redline adjustment, whichever reflects the current approved compensation amount.

On those claims where a Right of Way Claim Report is not appropriate, the Appraisal Section will be responsible for providing an allocation with the approved appraisals setting forth

1. the value of any right of way being acquired
2. the value of any permanent easements being acquired
3. the value of any temporary easements being acquired
4. the value of any improvements being acquired
5. amount of damages to the remainder, if any
6. amount of benefits, if any, created by the project.
7. whether there is an uneconomic remnant/buildable lot

The Agent must be most careful in the preparation of the [FRM10-B](#) by paying utmost attention to the pertinent data that must be inserted. Incorrect or misleading written information to the claimant can cause serious consequences. Access control to remaining tracts should be specified so there can be no misunderstanding on the owner's part as to the remaining access.

The Agent should prepare the [FRM10-B](#) and sufficient copies. The original [FRM10-B](#) is for the owner, a copy will be placed in the Final Report folder on the s (groups) drive. If there are leaseholds involving Federal Agencies and/or tenant owned improvements, separate [FRM10-B](#) with individual allocations of the

offer will be given to the fee owner, Federal Agency and/or owner of a tenant owned improvement, when a disclaimer has been secured from the fee owner ([FRM10-C](#)). Where leases are involved, offers for leaseholds will not be made separately from the fee interest in the property in the approved appraisal and the [FRM10-B](#) will be given to the owner and copied to the Lessee.

On a claim where a replacement housing payment is involved, a [FRM15-G](#) outlining the amount of the replacement housing payment applicable to that claim will be prepared and presented to the owner-displacee at the same time the offer for the right of way is made. The replacement-housing offer is further discussed in Chapter 15 of this Manual.

Important Note regarding 1099s: On the [FRM10-B](#), the Agent will note that the amount for Temporary easement acquired has (Rental of Land) within the description. The Department has determined that in order to follow IRS guidelines, it must report any amounts paid for temporary easements by issuing a 1099 form to the payee. This 1099 will categorize the temporary easement amount as “Rents”. In addition, the owner may receive a separate 1099 form for the remainder of the settlement amount. The Department makes no assertion as to whether the settlement amount is taxable or how the property owner should handle these 1099s. The 1099s merely report the payments. The Agent is not to give any tax advice. If asked tax related questions, he/she should request that the property owner discuss the matter with their accountant or with the IRS or NC Department of Revenue. 1099s are mailed out from the Fiscal Unit to payees in late January of each year.

10.11 NOTICE TO VACATE

A person lawfully occupying real property cannot be required to move from the home, farm or business location without being given at least ninety days' notice of the date he/ she will be required to vacate the property. This notice must be given in writing by the state or political subdivision having responsibility for the acquisition of the property. An exception to this requirement of a ninety-day notice may be made in very unusual circumstances by the Relocation Coordinator.

On all claims involving displacees which have been settled or closed, and the owner has received the settlement proceeds, or on which condemnation proceedings have been instituted, a letter signed by the Division Right of Way Agent will be mailed first class or hand delivered to the displacee. The date the person is required to vacate the property must be specified in the written notice, and that date cannot be less than ninety days from the original relocation offer, and must be at least 30 days from the acquisition of the property by the Department. The Agent, in calculating the, must anticipate the time required for

delivery and receipt of the letter.

As stated above, the written notice will not be given until (1) the claim is closed and the owner has received the settlement proceeds, or (2) the claim has been condemned by the filing of the declaration of taking. The Agent should maintain close contact with the closing attorneys so that the letters can be mailed immediately after the closure of the claim.

Copies of vacate letters to tenants should be sent to the respective lessor property owners. All owners of personal property, including billboards, barns and out buildings with personal property therein, must also receive appropriate vacate letters. Examples of all vacate letters are included in Chapter 15 of the Manual.

10.12 OFFER SUBJECT TO DEPARTMENT OF TRANSPORTATION APPROVAL

The Agent's approach to the property owner should be that he is authorized to recommend settlement to the Department for acceptance of the amount of the property owner's offer to settle. Property owners must be made fully aware that any settlement entered into is not a binding contract until accepted by the Department of Transportation.

10.13 DISCLOSURE OF APPRAISALS

In the event a property owner or their attorney requests a copy of the appraisal made on their property, the Agent should obtain a written request from them. The Division R/W Agent may then provide a copy of the approved appraisal to the owner or their attorney, provided the claim has not been condemned. **Once condemnation has been filed on a claim, the appraisal and any other documents in the file are subject to the judicial rules of discovery, and the request should be forwarded to the AG trial attorney.** The Review Summary ([FRM5-S](#)) and Review Certification ([FRM5-R](#)) are not part of the approved appraisal and will not be given out with the appraisal unless the Raleigh R/W Office directs the Division R/W Agent to do so. If a request for an appraisal is granted, only a copy of the approved appraisal will be provided to the property owner. Appraisal should only be given out to a property owner or their attorney and only for their claim. Occasionally, once a settlement has been reached, it may be necessary to give a copy of the approved appraisal to a deed of trust or mortgage holder. This may be necessary in order to obtain a release and it is permissible with a written request.

To reiterate, a copy of an approved appraisal may be provided to the subject property owner, or their attorney, under the conditions stated above, during the

period of negotiations until the claim has been settled or condemned.

10.14 NEW VALUE EVIDENCE

It is conceivable, despite careful study and review that some element of value was not considered in the appraisal and will be brought to light during the negotiation. In this event, the Agent will provide such information to the Division R/W Agent and Area Appraiser for consideration. If this results in a revised approved appraisal and the original value is voided and superseded, a revised [FRM10-B](#) should be prepared and delivered to the owner with an explanation of the changes. Under certain circumstances, the Division R/W Agent may make minor revisions to an approved appraisal. This procedure “known as Red-lining” is discussed in Chapter 4 of this Manual. Under no circumstances should the negotiating agent attempt to revise or alter the appraisal.

In the event the Division Right of Way Agent has questions about any item in an approved appraisal, he/she should contact and discuss the questions with the Area Negotiator and Area Appraiser.

10.15 PROPERTY OWNER’S APPRAISALS

If property owners inquire if they should obtain an appraisal at their own expense, the agent will advise the property owner that the Department will consider any appraisal whose values and/or damages are properly supported and documented and, that submitting the appraisal to the Department will in no way change Departmental policy or obligate the Department to revise its offer of just compensation. The R/W Agent should forward any appraisal provided by the owner, to the Division R/W Agent who will present it to the Area Appraiser for review and consideration. Both federal and state regulations do permit the consideration of an owner’s appraisal, if in proper form, and in some instances, an owner’s appraisal may have a bearing on the final determination of value.

10.16 NEGOTIATION BY CORRESPONDENCE

The R/W Unit prefers in person contacts, especially for initial contacts and offers as opposed to telephone, letter and email contacts. It is believed that the communication process works much better in person, with the agent and the owner able to ask and answer questions promptly, clearly, and instantly. The process of building trust is generally more successful in person than via other methods – the agent is able to provide information and instantly receive feedback from the owner. The owner may be more forthcoming with necessary information or concerns. The Agent’s availability says to the owner, “you are important” and

this matter is important". Lastly, in person contacts provide a real person for the owner to interact with.

All owners residing within the state should be contacted in person. If (1) a property is owned by an out-of-state owner, (2) the property owners are located within NC but a very far distance away, or (3) the owner is unwilling to meet face to face, the agent should first contact the owner by phone and determine if the owner is planning to or wants to come to the property, and if so, the agent should arrange to meet the owner in person for the contact. If the owner has no plans to visit the parcel, or refuses to meet the agent, the agent may write a letter to the owner advising of the Department's intent to acquire all or a portion of the property.

This letter should be as complete as possible in explaining the nature of the project, the areas to be acquired, how the project will affect this property, depicting cuts, fills, proximity, effects of temporary and permanent construction and drainage easements, utility easements, control of access, roadway profiles and typical sections and driveway grades. Included with the letter are copies of the plan sheets, typical sections, [Right of Way Brochure](#), [Title VI Brochure](#), and a [Relocation Assistance Brochure](#) (if applicable). The agent will advise the owner, of the Department's procedure in having the property appraised and his/her right to accompany the appraiser on an inspection of the property, in providing a written offer of compensation to be based on the appraisal. If displacees are involved, the letter should include an explanation of the Department's relocation policy, a [relocation brochure](#), an explanation of the notice to vacate, and notice that an interior inspection of any improvements may be necessary. A copy of the letter will included with the appraisal request forms on the s (groups) drive.

After receipt and study of the approved appraisal, the agent will contact the owner and attempt to meet in person. If an in person meeting cannot be accomplished, the offer should be discussed via telephone and followed up with a letter. The letter should include the [FRM10-B](#), an explanation of the department's offer of just compensation and an explanation of how the property will be affected by the project. The agent may include the instruments to be signed if the offer is accepted. The letter should give the appropriate instructions as to how the deed, deed of easement or option should be executed and notarized. A time limit for action by the owner should be stated in this letter, and the need for a prompt reply expressed. The Agent will follow up by correspondence or telephone if the owner does not promptly reply. If the owner does not reply, the agent will make and fully document additional efforts to contact the owner, by certified letter, telephone, email, or other appropriate means.

10.17 NEGOTIATION WITH OWNER (HIS/HER AGENT OR ATTORNEY)

Typically, negotiations will be carried out directly with the owner of the property. Sometimes, owners will have other family members or acquaintances present during negotiations. In some instances, however, the property owner may designate an agent or an attorney to negotiate in his/her behalf. Whenever the agent is informed that an owner is represented by an attorney, all further negotiations shall be conducted through that attorney or with that attorney's knowledge and permission. The attorney should provide the agent with a letter stating that he/she represents the owner. If the property owner subsequently informs the Agent that he/she is no longer represented by counsel, such notification should be made in writing with a copy to the attorney before negotiations are discontinued with the attorney and made directly with the property owner. For a non-attorney to represent an owner and act in the owner's behalf, that agent must be a licensed real estate professional in order to be involved in the negotiations of a settlement.

10.18 NEGOTIATION WITH HEIRS

Where there are a small number of heirs located locally, it may be best to arrange a meeting with all of the heirs and collectively negotiate with them.

Where some of the heirs are nonresidents, it may be desirable to find out if one of the heirs is willing to act as attorney-in-fact for the group; if so, power of attorney forms should be circulated among all the heirs to designate one as their attorney-in-fact. These forms should be properly executed and notarized since they must be recorded prior to the instrument of conveyance. If this procedure is followed, the negotiations and subsequent closure may be greatly simplified.

In the case of heirs or multiple owners of a parcel, the agent should find out how the proceeds of the settlement should be paid. A provision should be placed in the instrument specifying how the proceeds will be paid: (1) the amount of the total consideration to be paid to each heir or (2) the total amount is paid to one of the heirs or (3) the total is paid to the closing attorney who will distribute the proceeds according to the heir's desires. See a sample clause in the Chapter 7 forms on s (groups) drive.

The Agent may encounter estates with numerous heirs, some of which are missing and their whereabouts unknown, maybe involving minors and incompetents, making it virtually impossible to carry on the negotiation. There will also be instances where the Agent can reach an agreement with some of the heirs of an estate but not with others. In such instances, the agent should contact the Assistant State Negotiator or State Negotiator for guidance.

10.19 NEGOTIATION FOR PROPERTY UNDER LEASE

On those claims where property is subject to a lease, the total amount of the offer should be made to both the lessor (fee owner) and the lessee. The Agent should inform the lessor and lessee that the Department requires both of them to agree to the amount of settlement and to execute the right of way deed or easement and any other instruments needed. If their lease agreement does not provide for division of the proceeds of the acquisition, the Agent should point out that the distribution of the proceeds of the acquisition is a matter to be agreed upon between the owner and the lessee. Except as to the contributing value of improvements, the Department's appraisals will not have an allocation or "breakdown" of the damages between the lessor and lessee.

During the course of negotiations, the Agent may discover that the real property being acquired as right of way has been leased by the property owner to a tenant who has erected a building or has installed other improvements and retains ownership to them. In such cases, the Uniform Act requires that the tenant receive just compensation for any buildings, structures or other improvements. These buildings, structures or improvements are referred to as "tenant-owned improvements". The tenant is due just compensation even if the lease requires the tenant to remove any buildings, structures or improvements at the end of the lease period.

In those cases where (1) the lease or other agreement between the lessor and the lessee provides that the lessee has no right to receive any of the proceeds of the acquisition other than for the "tenant-owned" improvements and (2) the lessor is willing to disclaim all interest in the improvements to the property which are owned by the lessee, the Agent should negotiate separately with the lessor and lessee and settle their interests separately with the lessee regardless of whether or not settlement can be reached with the lessor. Without prior approval from the Raleigh Office, the Agent should not settle separately with the lessor when a settlement cannot be reached with the lessee, except as provided for in Section 10.24. With such prior approval from the Raleigh office, the Area Appraiser will obtain and furnish an allocation, or "breakdown", of the approved appraisal for the damages between the lessor and lessee. Before negotiating separately with the lessor and lessee, the Agent must first obtain from the lessor a copy of the lease or other agreement between the lessor and lessee which provides that the lessee has no right to receive any of the proceeds of the acquisition other than for the improvements. The Agent must also obtain an executed Disclaimer form ([FRM10-C](#)) from the lessor for all interest in the improvements of the lessee. When the negotiations with the lessee for the improvements are successful, the Agent should secure an agreement from the lessee [FRM10-D](#) whereby the lessee transfers all interest in the improvements under lease to the Department. Retention and removal of the improvements of the lessee should be handled in accordance with Chapter 9 and 14 of the Manual.

EXAMPLE: John Smith is the fee owner of the land involved in a right of way claim. There is a one-story metal building located on this land within the right of way which is used as a repair shop and is owned by Joe Doe. The Agent would contact John Smith and Joe Doe (separate or joint initial contact) and obtain a copy of the lease or other agreement which must specify that the lessee, Joe Doe, would have no right to the proceeds of the acquisition other than for the improvement (metal building). The Agent would request the appraisal which would be returned through the normal channels which would have the value of the metal building separated from the remainder of the claim. The Agent should then ask John Smith (lessor) to sign the Disclaimer [FRM10-C](#) for any interest he might have in the improvement. If John Smith signs the disclaimer and the Agent is successful in his/her negotiations with Joe Doe (owner of the metal building) for the appraised value of the building, the Agent would have Joe Doe sign an improvement agreement ([FRM10-D](#)) conveying his interest in the metal building to the Department. The Agent could then conclude the right of way claim with John Smith through negotiation or condemnation.

10.20 NEGOTIATION WITH DEPARTMENT OF TRANSPORTATION EMPLOYEES

The following is Department policy on acquiring right of way from Department of Transportation employees performing highway functions:

1. The appraisal of any property having damages in excess of two thousand five hundred dollars (\$2,500), owned by an employee of the Department, shall be made by an independent fee appraiser rather than by a staff appraiser who is an employee of the Department.
2. The Right of Way Review Board shall pass on the approval of the appraisal of any employee of the Right of Way Unit, or any other employee of the Department performing highway functions at salary grade 73 or above.
3. Right of way acquisitions may be settled at the approved appraisal with employees below salary grade 73.
4. Right of way acquired from any employee of the Department performing highway functions at salary grade 73 or above shall not be acquired by negotiation but by the filing of a complaint and declaration of taking.

Acquisition of property owned by or leased by a Board of Transportation member will be accomplished by the filing of a complaint and declaration of taking, except for Secondary Road improvements which include no compensation (these may

be signed as normal).

If there are any questionable situations, the agent should seek guidance from the Raleigh R/W Office.

10.21 NEGOTIATION WITH LOCAL GOVERNMENT UNITS

In negotiating with local governmental units, the negotiation should be conducted with the official head or business manager of that unit. For example, with a city or town, negotiations should be commenced with the mayor or city manager; for counties, with the chairman of the county Board of Commissioners or county manager in those few counties having a manager; with school boards, the chairman of the board or the superintendent of schools. These officials may negotiate directly with the Agent or they may designate someone else for that purpose. Minutes of actions by the governmental units authorizing settlements must be placed in the final report folder on the s (groups) drive.

10.22 NEGOTIATIONS WITH STATE AGENCIES AND INSTITUTIONS

All state-owned lands, including the Department of Transportation (with the exception of highway rights of way and residues), are titled to the State of North Carolina and their uses are allocated to specific agencies or institutions. Chapter 146, Articles 13 and 14 of the General Statutes provide that the acquisition and disposition of all state-owned lands, with the exception of highway rights of way, residues, and material pits, shall be accomplished through the Department of Administration with the concurrence of the Governor and the Council of State. Whenever land allocated to a state agency or institution is required as for a highway project, an easement will be made transferring the land from that state agency to the Department of Transportation for highway purposes. The field agent shall make the initial contact with the appropriate local representative of the state agency or institution to explain the project and its effects on the parcel and the right to an appraisal. After the initial contact, the Agent will email the Raleigh Right of Way Office advising that the initial contact has been made, identifying the location of the property, explaining the effects of the acquisition, and forwarding a copy of the [FRM4-C](#) (it is permissible to also submit an approved claim report with the package). This letter should be placed in the final report folder on the s (groups) drive. If a claim report cannot be used due to the amount, or upon request of the agency, the field agent will request an appraisal and cc the Raleigh RW Office on the email to the Area Appraisal Office.

After an appraisal has been obtained and studied, the Agent will forward a copy of the approved appraisal along with any other pertinent information to the

Raleigh RW Office for further handling of the claim with the State Property Office in the Department of Administration in Raleigh. If objections to the project or its location are raised on the initial contact by the officials of the agency or institution, the Raleigh Office should be immediately notified of such objections. The Raleigh RW Office will then contact the State Property Office and request the transfer of the needed areas. Improvements of secondary roads and additions to the system will be handled as indicated above where applicable. The agent should follow up periodically with the State Negotiator's office to track the progress of the acquisition. If delays in the process jeopardize the project schedule, the Division RW Agent should contact the State Negotiator.

10.23 NEGOTIATION WITH FEDERAL AGENCIES

The acquisition of right of way or easements across lands owned by the United States of America can only be accomplished through negotiations since states do not have the power to condemn federal lands. Negotiations with Federal agencies for right of way across lands owned by the United States will be conducted in conformance with the FEDERAL-AID POLICY GUIDE, Subchapter H - Right-of-Way and Environment, Part 712 - The Acquisition Function, Subpart E - Federal Land Transfers and Direct Federal Acquisition. This same procedure will apply to acquisition of material sites and interests in lands acquired for other highway purposes. Acquisition on claims involving Federal lands and Federal agencies will be handled by the State Negotiator's Office. The field agent shall make the initial contact with the appropriate local representative of the federal agency to explain the project and its effects on the parcel and the right to an appraisal. If objections to the project or its location are raised on the initial contact by the officials of the agency or institution, the Raleigh Office should be immediately notified of such objections. After the initial contact, the Agent will email the Raleigh Right of Way Office advising that the initial contact has been made, identifying the location of the property, explaining the effects of the acquisition, and forwarding a copy of the [FRM4-C](#) (it is permissible to also submit an approved claim report with the package). A copy of the email should be placed in the final report folder on the s (groups) drive. If a claim report cannot be used due to the amount, or upon request of the agency, the field agent will request an appraisal and cc the Raleigh RW Office on the email to the Area Appraisal Office.

After an appraisal has been obtained and studied, the Agent will forward a copy of the approved appraisal along with any other pertinent information to the Raleigh RW Office for further handling of the claim with the Federal Agency. Improvements of secondary roads and additions to the system will be handled as indicated above where applicable. The agent should follow up periodically with the State Negotiator's office to track the progress of the acquisition. If delays in the process jeopardize the project schedule, the Division RW Agent should contact the State Negotiator.

Improvements of secondary roads and additions to the system will be handled as indicated above where applicable. The agent should follow up periodically with the State Negotiator's office to track the progress of the acquisition. If delays in the process jeopardize the project schedule, the Division RW Agent should contact the State Negotiator.

It is not uncommon for federal agencies to grant easements rather than fee simple right of way. In most cases, the easement (or similar document) will be recorded. Also please note that some Federal Agencies (such as US Forest Service and Camp Lejeune) will not grant utility easements to the Department, opting instead to have the utility owner secure the easement or similar rights, directly from the Federal Agency. In these cases, the PUE will not be shown on the project plans and will not be acquired by the Department as a part of the project. At the initial contact, the Right of Way Agent should find out the Agency's position and act accordingly.

10.24 PROPERTY LEASED TO FEDERAL AGENCIES

On those claims involving property that is leased to Federal agencies, the leasehold interest will be appraised and assigned a value separate from the fee interest in the approved appraisal. The Agent will negotiate separately with the lessor while the State Negotiator's Office will handle negotiations with the Federal agency having a leasehold interest in the property. This procedure should be followed on all claims involving properties that are leased to Federal agencies. As previously indicated, Federal interests will not be condemned.

10.25 NEGOTIATION WITH THE U. S. FOREST SERVICE

The North Carolina Department of Transportation has entered into a Memorandum of Understanding with the U. S. Forest Service regarding the construction of public highways on or across National Forest lands. This Memorandum of Understanding provides that authorization for use of National Forest lands will be grouped in the following categories:

- a. Federal Aid Highways - Rights of way will be granted through the Federal Highway Administration pursuant to Section 317 of the Federal Aid Highway Act of August 27, 1958, (P. L. 85-767; 72 Stat. 885-921; 23U.S.C.), in the form of an easement for rights of way purposes only with all other rights reserved to the Forest Service.

- b. Other Highways and State Roads - (Not Federal Aid) Rights of way will be authorized by United States Department of Agriculture easements.
- c. Borrow Pits, Quarry Sites, Etc. - Use will be authorized by terminable special use permits.

All requests for right of way across property of the U. S. Forest Service must first have a Biological, Botanical and Cultural Resources Evaluation prepared for the project since the U. S. Forest Service will not grant any right of way or right of entry on any project (primary or secondary) until an evaluation has been prepared. This process requires approximately six months so the Agent should request an evaluation through the State Negotiator's Office as early as possible. On primary projects, an evaluation should have been made during the planning process as part of the environmental study, i.e., Environmental Impact Statement, Categorical Exclusion, etc. On secondary roads, a letter requesting an environmental evaluation or assessment should be requested through the State Negotiator's Office as soon as the District Engineer has completed the priority list. To assist the State Negotiator's Office, include a copy of the plans and vicinity map with the area involved shaded in red along with the letter of request. All applications for rights of way and borrow sites on forest lands will be made by the State Negotiator's Office. It will be the responsibility of the agent assigned to a project to submit necessary property line information or other information to the Raleigh Office for handling with the Forest Service at the same time as the Appraisal Request is prepared and submitted to the Area Appraiser. See also Section 10.23 above.

10.25A ACQUISITION FROM AIRPORTS

On occasions, projects will require the acquisition of right of way, control of access, or easements from a property being used as an airport. Airport property is typically owned by a city, county or authority (also known as a sponsor). If a sponsor (a city/town, county or authority) has accepted FAA funds for their airport, they are obligated to operate as an airport for 20 years. Any change to the use of the airport property (as noted on an airport's Exhibit A) that is not aeronautical, should go through the FAA land release process. How the land was acquired by the airport is not a key factor just that it is shown as airport property.

Additionally, some airports were classified as "War Assets". If an airport property was formerly a "war asset", a FAA release is required. Even though it's been over 20 years since the end of WWII, the land release process must take place to the satisfaction of the FAA, and this process is more involved than non-war asset property.

Potential takings from Airports should be investigated by the Division RW Agent as early as possible, and prior to the commencement of acquisition if practical.

The Division Right of Way Agent should ask if the airport is a federally obligated airport, or if the airport was classified as a war asset. The NCDOT – Division of Aviation should be consulted promptly on all acquisitions of right of way and/or easements for airports. The NCDOT Division of Aviation can provide assistance with securing any required FAA release. The acquisition will follow normal process of initial contact, appraisal, offer, as the airport sponsor is entitled to the same rights as any other property owner. The Right of Way Agent shall work in concert with the sponsor and Division of Aviation to follow this procedure. The conveyance will be from the sponsor, but any required release from the FAA shall be obtained prior to the conveyance. Condemnation will not be used until the FAA any required release. For additional assistance, the Agent should contact the Assistant State Negotiator or State Negotiator. Below is an example Exhibit A for an airport.

EXHIBIT 'A' REQUIREMENTS AND OBJECTIVES

An Airport Sponsor has a federal obligation to submit accurate Exhibit 'A' Airport Property Inventory Maps (Exhibit 'A') when applying for and prior to execution of certain federal grants.

The Airport Sponsor is required to maintain and update the Exhibit 'A' by submitting it to the Federal Aviation Administration (FAA) Airports Specialist. The Exhibit 'A' is a snapshot of the inventory of parcels that make up dedicated airport property. The Exhibit 'A' indicates how the land was acquired, the funding source for the land and if the land was conveyed as Federal surplus land or Government Property. Other detached parcels owned by the Airport Sponsor that are dedicated to airport purposes must also be shown on the Exhibit 'A'. The Exhibit 'A' must show all dedicated airport property regardless of the type of funds (AIP, state, local, etc.) used to acquire that property. All land described in a project application and shown on an Exhibit 'A' constitutes the airport property federally obligated for compliance under the terms and covenants of a grant agreement.

An Airport Sponsor is federally obligated to obtain FAA consent to delete any land described and shown on the Exhibit 'A'.

New airports receiving a grant for the first time must submit an Exhibit 'A' depicting the land required to support the facilities needed to operate the airport.

10.26 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS

Highway projects within municipalities are constructed in accordance with a municipal agreement executed by the Municipality and the Department. The

municipal agreement sets forth such conditions as to whether the Department or the Municipality will acquire the right of way, participation by the Municipality in regard to right of way costs, traffic operating control devices, utility provisions, etc. Preparation of municipal agreements is the responsibility of the Department's Programming and TIP Branch.

In some instances, municipalities will agree to be responsible for the acquisition of proposed rights of way for a project within the boundaries of the municipality. In these situations, it is the responsibility of the Division Right of Way Office to insure that rights of way are acquired in compliance with acquisition guidelines, i.e., the owners are advised of their rights, that appraisals are made in accordance with DOT policy, appraisals reviews are either performed by or approved by DOT, written offers made, adequate descriptions of rights of way being acquired, etc. It is preferred that all necessary right of way instruments be prepared by the Division Right of Way office on departmental forms and deliver them to the municipality for execution. Some larger municipalities will have their own right of way departments and will secure the necessary rights of way using their own easement and deed forms and then convey the right of way to the Department. This applies to all state-system roads. The Agent should fully cooperate and provide assistance to the municipality on those projects where the municipality is securing the right of way. The Division Right of Way Office will furnish the Raleigh Office with the current status of right of way acquisition on all municipal assisted projects.

On projects where the municipality is securing the right of way, the Agent should check the acquisition on each individual parcel, including both settled and condemned claims, to insure that the municipality has secured all of the necessary rights of way before a Right of Way Field Certification is submitted to the Raleigh Office. The Right of Way Field Certification is discussed in Chapter 3 of this Manual. In the case of donations, the Municipality should provide a signed statement by the property owner acknowledging that their rights have been explained to them.

10.27 NEGOTIATIONS OF CLAIMS IN BANKRUPTCY

Chapter 11 of the United States Code 363(a) governs bankruptcies. When bankruptcy has been filed, all actions involving the owner's property must be approved by the Bankruptcy Court, including condemnation. This means the Department cannot acquire the needed right of way property affected by the bankruptcy without approval of the Bankruptcy Court. All property transfers during the existence of a stay would be considered void, and in a given situation, the Department could be held in contempt for ignoring the stay. The Department, through its attorneys, will need to ask the bankruptcy court to approve the acquisition of the needed areas.

The Agent should confirm that a bankruptcy proceeding is pending with the owner and take the following steps:

- A. Find out the name of the individual or entity who has declared bankruptcy.
- B. Find out the bankruptcy court in which the case has been filed. In North Carolina, there are three separate bankruptcy court districts, Eastern District, Middle District and Western District, each of which are divided into divisions.
- C. Find out the following information about the bankruptcy case from the property owner and the Clerk of the bankruptcy court in which the case is filed:
 - 1. the case number
 - 2. the type of bankruptcy case filed, i.e., Chapter 9 - voluntary, by a municipality; Chapter 7 - involuntary liquidation; Chapter 11 - involuntary reorganization, Chapter 12 - voluntary family farmer's debt adjustment case; Chapter 13 - voluntary individual's debt adjustment case.
 - 3. status of the bankrupt case
 - 4. name, address and telephone number of:
 - A. the Attorney for the debtor-in-possession (property owner)
 - B. the Trustee in the case
 - C. the Judge in the case

The Agent should make an initial or further contact with the property owner and explain that the acquisition must be made through the bankruptcy court and not with the owner. The Agent shall proceed to obtain an appraisal and a title opinion of the property. Upon their receipt and with the above pertinent information, the file will be forwarded to the State Negotiator who will, in turn, send the file to the Attorney General's Office requesting a modification of the stay order to allow the acquisition of right of way either by deed of easement or condemnation. Due to the unknown time element in seeking a modification of the stay order from the bankruptcy court, the handling of the claim should be done in expeditious manner to prevent delays in meeting the project acquisition schedule. After a stay order has been modified, the Attorney General's Office will instruct how the acquisition will be finalized.

10.28 ENTRY AGREEMENTS

G.S. 136-118 provides that with the written consent of the property owner, the Department may enter onto a property and proceed with construction, even in the absence of reaching a settlement or filing condemnation. In certain situations the Department may elect to proceed with construction with the written permission of the property owner. These conditions may be:

1. when conditions have prevented a settlement from being reached (use [FRM10-E](#))
2. when it is desirable to delay condemnation for further negotiations (use [FRM10-E](#))
3. when a condemnation action has been recalled due to settlement, but right of way certification is required prior to closure of the claim (use [FRM10-E](#))
4. when a settlement has been reached, but it is advantageous to have entry onto the parcel prior to closing (use [FRM10-EE](#))

There are two Entry Agreements: [FRM10-E](#) and [FRM10-EE](#). In general, the use of Agreements for Entry is discouraged as it usually results in prolonging the negotiations and extending the time of completing the r/w acquisition. In addition, changes may occur to the property which could increase the amount of compensation the Department may have to pay. Where the Agent feels that it is advisable to secure an Agreement for Entry, full details and reasons should be discussed with the Division R/W Agent and consent obtained before entering into any entry agreement. Upon obtaining an Agreement for Entry from an owner, the Agent should scan the agreement into the final report folder of the s (groups) drive. A running total number of entry agreements in force on a project should be reported on the Division's Monthly Primary Report. Whenever an impasse to negotiations has been reached, either the Department or the owner may request condemnation proceedings be initiated on the claim. It is incumbent upon the Agent and the Division Right of Way Office to monitor all agreements for entry to insure that right of way is acquired in a timely manner – all of the right of way needed for the project should be acquired, by condemnation if necessary before construction is completed on the project. Parcels with entry agreements will not be listed on r/w certifications since the Department has legal access on the parcel.

Entry Agreements may be accepted by the Division R/W Agent. They do not have to be recorded unless the Agent anticipates a transfer of ownership of the parcel. Keep in mind that the Agent may not modify or delete the language on either Entry Agreement form without approval from the Assistant State Negotiator.

Note: It is permissible to recall (cancel) a scheduled condemnation action if an entry agreement is secured. However, this practice is not encouraged unless the Division R/W Agent is certain a settlement is eminent.

10.29 PLAN REVISIONS

In general, once a project is in the acquisition phase, revisions will be initiated by the Division R/W Office, or the Design Unit.

Once the initial contacts are made, the project agent should compile a list of proposed revisions. Any plan revisions involving the design of the project, including control of access, access point widths and location, driveways, drainage, r/w and easement modification, and working around items should be first discussed with and approved by the Division Office.

If there are property line, topo, or existing r/w changes, Division RW Agent emails the revision with appropriate deeds/maps to the local Location & Surveys Unit with a cc to the State Location & Surveys Engineer; the local Location & Surveys Unit will research and send updated files to Roadway Design Engineer.

RW Agent prepares a memo ([FRM10-G](#)) which lists all proposed r/w revisions, pulls the appropriate pdfs from the current plans folder on Project Store and marks up the proposed revisions on the pdf file using "SnagIt" or a similar program. If plans are not on the project store, the agent marks appropriate plan sheets in red with proposed revisions and scans these sheets as a pdf. Agent sends both the pdf and memo to the Division Agent for approval. If the revision is urgent, this should be noted in the memo.

Division Agent reviews the agent's memo and revisions, places signature/date in top left block of the memo ([FRM10-G](#)). If there were any revisions that were sent to L&S, the appropriate check box will be checked. The Division Agent emails the memo and pdf plan sheets (deeds/maps not needed) to Assistant State Negotiator.

Assistant State Negotiator reviews and places signature/date in top right block of memo and emails the memo and pdf plan sheets to Assistant State Roadway Design Engineer with cc to the Area Utility Agent, Division RW Agent and RW Agent.

Upon receipt of email from Assistant State Negotiator:

1. Assistant State Roadway Design Engineer forwards revisions to appropriate Roadway Design Engineer for incorporation of revisions into plans.
2. Area Utility Agent has 7 days to reply with any concerns. If there are concerns, the appropriate Roadway Design Engineer will coordinate with the Area Utility Agent and Assistant State Negotiator to resolve the concerns.

Right of Way Revisions generated by Utility Section on Roadway Design Projects

Utility Agent prepares a memo which lists all proposed r/w revisions, pulls the appropriate pdfs from the current plans folder on Project Store and marks up the proposed revisions on the pdf file using "Snagit". If plans are not on the project store, the agent marks appropriate plan sheets in red with proposed revisions and scans these sheets as a pdf. Utility Agent sends both the pdf and memo to the Area Utility Agent for review. Area Utility Agent emails the memo and pdf plan sheets to Assistant State Roadway Design Engineer with cc to the Assistant State Negotiator (who forwards to Division RW Agent and/or other r/w personnel as needed).

Upon receipt of email from Area Utility Agent,

1. Assistant State Roadway Design Engineer forwards revisions to appropriate Roadway Design Engineer for incorporation of revisions into plans
2. Assistant State Negotiator (or his delegate) has 7 days to reply with any concerns. If there are concerns, revisions are on hold until the Assistant State Negotiator (or his delegate) and Area Utility Agent resolves the concerns.

Upon completion of revisions by Roadway Design

Roadway Design Engineer will draft revision memo and email memo to Carey Muse of the Raleigh RW Office (ccmuse@ncdot.gov) with distribution of the email memo to the appropriate Division Engineer, FHWA, Highway/Railroad Project Manager, State Utility Agent, Utility Section Engineer, State Location & Surveys Engineer and the State Traffic Engineer. Carey Muse will email the revision memo to all appropriate r/w personnel. RW personnel may draw down and print the revised plan sheets using the Srvconn program.

NOTE: If paper plans are to be sent out, Roadway Design Engineer will draft memo and request printing/distribution of plans sheets. This will be eventually phased out as projects are made available electronically by pdfs on Project Store. The memo/plans will be sent to Raleigh RW c/o Carey Muse, who distributes the revisions to all appropriate RW personnel. Plan print/distribution will be normal so that others units also receive paper plans.

Right of Way Revisions generated by Division Engineer Staff on Roadway Design Projects

The Division or other units should notify the appropriate R/W Agent and send the revision to them for processing according to Item 1.

Right of Way Revisions on DDC, DDL, Division Projects, Division Bridge Projects

Division Right of Way Agent will forward plan changes to Assistant State Negotiator for review using [FRM10-G](#) and plan sheets with changes marked in red. Assistant State Negotiator will review and approve and return to the Division Agent. Division RW Agent will forward to the appropriate Division Office personnel. Division Office will make revisions and send revised plans to Division RW Agent forward to requesting unit.

Right of Way Revisions on any projects not coming out of Roadway Design (Bridge Management, Rail Projects, Etc.)

Division Right of Way Agent will forward plan changes to Assistant State Negotiator for review using [FRM10-G](#) and plan sheets with changes marked in red. Division RW Agent should indicate the Unit that originated the project (ex: Rail Unit). Assistant State Negotiator will review and approve and forward to the appropriate unit.

The project engineer will draft revision memo and email memo to Carey Muse of the Raleigh RW Office (ccmuse@ncdot.gov). Carey Muse will email the revision memo to all appropriate r/w personnel.

Secondary Road Improvement projects – Revisions are sent by the Agent directly to the District Engineer.

On large projects, it may be preferred to send revisions in groups of plan sheets rather than waiting until all initial contacts have been made. The Agent should work to make sure all revisions to be made on a particular plan sheet are submitted at one time, in order to save both paper and the Roadway Design Department from having to make numerous changes to one particular plan sheet.

The plan revision process should be repeated again prior to the pre-let meeting towards the end of the r/w acquisition, or on an as needed basis.

It is imperative that the Administrative Unit has a correct set of plans for checking purposes. As previously stated, if there is a revision on a settled claim that is not shown of the printed set of plans, the Agent should include a plan revision sketch with the final report and note this on the [FRM12-A](#). **A condemnation final report should not be submitted for a parcel, if there are pending plans revisions on that parcel.** All corrections in property lines, ownership, areas,

etc., should be shown on the final letting plans for a project. At the time a project is let, a copy of the final letting set of plans will be forwarded to the Division Right of Way Agent for checking. It will be the responsibility of the Agent in charge of the project to check these plans to see if there are any further corrections to be made, and any such corrections should immediately be brought to the attention of the Raleigh Office. It will further be the responsibility of the Division Right of Way Agent to check and sign the final estimate plans for a project upon completion of construction. Any changes which may have occurred during construction should be shown on the final estimate plans. This is very important since plans will become the permanent Department record for both construction and right of way for the project.

Revisions may also be initiated by the Design Unit or the Utility Unit. Upon receipt of these revisions, the agent should study the revisions and determine whether new claims were created or whether existing claims need to be revised.

10.30 ADMINISTRATIVE ADJUSTMENTS

The Right of Way Agent should make a concerted effort to settle all claims on for the approved appraisal. All requests for administrative increases should be justified.

An Administrative Adjustment Form ([FRM10-F](#)) will not be necessary on administrative adjustments on the following premises:

1. When the administrative increase on the claim is less than \$4,500.
2. When the claim is settled for \$10,000 or less.

For all other settlements not mentioned above, an Administrative Adjustment/Condemnation Review Form ([FRM10-F](#)) with approved/recommended settlement authority or condemnation recommendation by the Division Agent and/or Area Negotiator will be electronically filed and notification emailed to the Assistant State Negotiator. The Assistant State Negotiator and/or the Manager or Assistant Manager of Right of Way will review and approve settlements for amounts above the Area Negotiator's threshold and/or recommend condemnation action. The approved [FRM10-F](#) will remain in the project/parcel file directory.

Administrative adjustments should be based upon those factors which support the settlement, such as trial risks, additional appraisal information, or other information.

10.31 NEGOTIATIONS - ADMINISTRATIVE ADJUSTMENTS INVOLVING REPLACEMENT HOUSING PAYMENT

The Agent must be most careful in negotiating claims where there is a replacement housing payment (hereafter referred to as RHP) involved and also on those claims involving administrative adjustments and an RHP. The amount of the RHP will be reduced when there is an administrative adjustment involved. Also, the claimant must obligate all of the amount of the approved appraisal (for house and lot only) plus any portion or all of the approved RHP offered in the purchase of replacement housing in order to qualify to receive a portion or all of the approved RHP. The Agent should not make any commitment to the claimant as to the amount of the approved RHP he /she will actually receive since the amount is conditional upon the expenditure for the purchase of the replacement housing. The Agent should explain that the claimant must meet all qualifications in order to receive the RHP. If there is an administrative adjustment involved in the settlement of the claim, the Agent should advise the claimant that the RHP will be reduced.

Regulations require that an owner-occupant's RHP be adjusted when the settlement amount is more than the amount of the approved appraisal. This requirement necessitates the proration of the administrative increase on claims involving farm acreages, acreage tracts, or misplaced improvements on other lands when the value of the improvement must be extracted from the approved appraisal and/or the value of a typical lot must be determined from the market. During an evaluation of the property for relocation assistance benefits, the percentage of the approved appraisal amount applicable to the value of a typical house and lot will be calculated. When negotiating a settlement, the percentage will be used to compute the amount to be deducted from the original RHP. The Agent should determine the amount to be deducted and advise the owner of the adjusted RHP for which he/she may qualify. Knowledge of computation methods for calculating reductions in RHP's is essential to the successful negotiation of a claim of this type.

Example 1:

In a hypothetical situation, the amount of the administrative increase over the amount of the approved appraisal is \$5,000, and the percentage stamped on the approved appraisal is 40%. The original RHP was indicated as \$3,000. To determine the amount of reduction of the RHP, the Agent should multiply \$5,000 (the amount of the administrative increase) by 40% (the indicated percentage applicable to the value of the typical house and lot) resulting in a \$2,000 amount by which the RHP would be reduced. By subtracting this \$2,000 figure from the original RHP amount of \$3,000, the adjusted RHP would be \$1,000 and the amount to which the owner would be entitled if

he/she qualifies.

Example 2:

In this situation, the property being acquired consists of 10 acres out of a thirty-acre tract plus the owner's residence. An adjusted RHP will be computed as follows:

1.Value of typical house and lot (As determined from the approved appraisal)	\$10,000
2.Approved Appraisal Amount	\$15,000
3.Original RHP	\$ 5,000
4.Percentage Applicable to 1 (Above \$10,000/\$15,000 = 67% of total acquisition price)	
5.Amount of Settlement	\$17,000
6.Amount of Administrative Adjustment (Over amount of approved appraisal)	\$ 2,000
7.Amount of Adjusted RHP (67% x \$2,000 = \$1340: \$5,000 - \$1340 = \$3660	\$ 3,660

10.32 CONDEMNATION REVIEW FORM

If all the necessary executed instruments cannot be obtained from the owners within the specified schedule, the Agent will complete [FRM10-F](#) and review it with the Division R/W Agent and Area Negotiator. The Area Negotiator will review [FRM10-F](#) and make any recommendations for further negotiations or other actions to be taken on the claim and sign the form. The Area Negotiator will transmit the signed [FRM10-F](#) to the Assistant State Negotiator for approval of a recommended course of action and signature before condemnation is filed. The completed/signed [FRM10-F](#) will be transmitted back to the original parties. The Agent handling the project shall take prompt and appropriate action on any instructions regarding further negotiations of the claim before condemnation is actually filed. The Agent places the approved [FRM10-F](#) in the final report folder on the s (groups) drive before submitting the final report.

Note: Some Agents/Area Negotiators may prefer to place the [FRM10-f](#) on the groups or share drive to be signed rather than email the form. This is acceptable and is at the discretion of the Assistant State Negotiator.

10.33 CLEARANCE OF RIGHT OF WAY

Upon completion of acquisition, the agent should inspect the project for improvements/structures, making sure all items are accounted for, inspected and/or abated for asbestos and have been disposed of or will be disposed of as set out in Chapter 14, the Property Management Section of this Manual. A list of remaining improvements/structures should be submitted to the Project Design Engineer to be included in the roadway contract as Series 200 items. This subject is covered in detail in Chapter 14, the Property Management Section of this Manual.

10.34 ITEMS OF WORK TO BE INCLUDED IN CONTRACT

The Division R/W Agent will notify the Raleigh R/W Office of any specific items of work to be done as part of the contract such as fence resetting, etc. The Division Engineer and Resident Engineer should be copied on the notice. Such work should be anticipated as far in advance as possible so it can be made a contract item rather than having to later resort to change orders resulting in added contract costs.

10.35 PRE-CONSTRUCTION CONFERENCE

After the project letting but prior to the availability date to the contractor, the Division Construction Engineer (or his/her designate) will arrange a pre-construction meeting with the contractor. The project Agent and/or Division R/W Agent should attend this meeting. The Agent will provide a memorandum to the Division Construction Engineer indicating the following:

1. list of parcels condemned
2. any 215 series items (structures) that have been removed
3. copies of asbestos inspection reports for any remaining structures
4. the status of any delay of entries
5. any special provisions or items of work agreed upon with a property owner (an example is working around a tree or sign, if a note is not on the plans)
6. any unusual or contentious issues encountered during acquisition
7. status if known of any contamination removal
8. any pending revisions to the plans
9. copies of right of way agreements

10.36 TORT CLAIMS

In general, tort claims may be defined as those claims arising from a negligent act of any officer, employee, involuntary servant or agent of the state while acting within the scope of his office, employment, service or authority. Some claims of this type are damages resulting from blasting, damages to person or property, or the negligent operation of motor vehicles or other equipment, or, in some instances, various categories of drainage complaints. Tort claims are not to be confused with condemnation, and under no circumstances are damages resulting from such claims to be negotiated by the Right of Way Unit. Chapter 143, Article 31, of the General Statutes provides that the North Carolina Industrial Commission is constituted as a court for the purpose of hearing and passing upon tort claims against the Department of Transportation. If a property owner asserts damages of this nature, the Agent should discuss this situation with his/her supervisors to determine the proper course of action.

Chapter 11 CLEARANCE OF SUBORDINATE INTERESTS

11.01 GENERAL REQUIREMENTS

All interests which are adverse or detrimental to the interests of the Department of Transportation and to the purposes for which land or easement in land is being acquired should be eliminated from property being acquired. Due consideration shall be given to both the actual and potential effects of each exception in the title report. If such exceptions are in any way adverse to the interest of the state, appropriate actions to eliminate or subordinate such exceptions should be taken. Unless instructions to the contrary are issued by the Raleigh office, all interests, which were made, imposed, or suffered by the grantors and/or previous owners, shall be cleared prior to submission of the Final Report or prior to or upon closing of the transaction. These exceptions include mortgages, deeds of trust, leases, judgments, contracts of sale, taxes, assessments, improvement liens, easements or other liens of record.

Where subordinate interests are to be cleared or eliminated by separate instruments, such instruments should receive prior approval of the Deputy Attorney General or the local abstracting attorney for the Department. These instruments should be executed and acknowledged in proper form for recording.

11.02 DEEDS OF TRUST & MORTGAGES

On both Federal-aid and State-funded projects, deed of trust releases may be waived on claims where the settlement is not over \$25,000.00. There should be sufficient value in the area remaining to cover the outstanding balance on the deed of trust. The waiver should be noted in the remarks section of [FRM12-A](#) (Final Report). The waiver of deeds of trust releases on claims with settlements above \$25,000.00 must receive approval from the Assistant State Negotiator.

When it is necessary to clear Deeds of Trust, one of the following methods should be used:

1. The deed of trust may be paid off and cancelled by the property owner prior to closing.

2. The Department's closing attorney may pay off and cancel the deed of trust out of the settlement proceeds
3. A separate instrument may be executed by the beneficiary and trustee, and recorded, releasing from the deed of trust that portion of the property to be acquired by the Department. The release should specify to whom the fund should be paid. See also Chapter 7 and [FRM7-L](#). Note: Occasionally, a financial institution may propose the use of its own release form. Any release forms not in the DOT Forms folders should be sent to the Assistant State Negotiator for review and approval. The use of these forms is frequently approved, provided the Department's interests are protected.
4. The beneficiary and the trustee of the deed of trust may execute the same easement/deed as the property owners and their names should appear in the heading or caption. The easement/deed should specify in the special provisions how the proceeds should be paid. (See Section 8.14)

In most instances where a trustee joins in the execution of a Deed/Easement, he does so only for the purpose of releasing the property from the operation of deed of trust and not for warranty of title, in which case the following clause may be added to the agreement:

The undersigned trustee joins in the execution of this easement only for the purpose of releasing the above property from a Deed of Trust recorded in Book _____, Page _____ from (Name of Grantor) to the undersigned as trustee for (Name of beneficiary of Deed of Trust) and for no other purpose.

After settlement has been reached with the property owner(s), the Agent should determine if a deed of trust must be cleared. If so, the Agent should inform the property owner and solicit their assistance should a release be needed.

It is important that the Agent contact the holder of the deed of trust (typically a financial institution) and explain the acquisition by furnishing plan sheets and the amount of the Department's offer. The Agent should follow this procedure especially in those cases involving a partial acquisition of the property. Very often the trustee will not agree to execute the release or deed/easement until the beneficiary in the deed of trust has executed the instrument. The beneficiary may require a copy of the appraisal and it is permissible to provide a copy of the approved appraisal (not including the review certification and review summary) Fees for releases may be required and will be paid, if reasonable.

In general, mortgages should be handled in a manner similar to that of deeds of trust.

11.03 LEASES & JUDGMENTS

Leasehold interests should be cleared by one of the following methods:

1. By the lessee joining in the execution of the Deed of Easement or deed.
2. By separate lease release ([FRM7-M](#)) from the lessee made either to the lessor or to the Department. The lease release, if to the lessor, should be recorded prior to the close of the transaction.
3. By automatic cancellation of the lease under the terms of the lease.

A determination of how much of the settlement, if any, is to be paid to the lessee needs to be made prior to execution of release instruments. The release should specify to whom the fund should be paid. See also Chapter 7 and [FRM7-M](#).

Judgments are to be paid off and cancelled or appropriate releases of judgments are to be secured and cleared of record; however, in the case of partial takings where the value of the remainder is more than ample to satisfy such liens, this requirement may be waived with the written consent of the Raleigh office. If the total amount of judgments and/or other liens on record against the subject property exceed the value of the property, the Agent should secure the advice of the Raleigh office before closing the transaction.

11.04 CONTRACTS OF SALE

Where a property is encumbered by a contract of sale, such interest should be cleared (1) by both the vendee and vendor being made parties to the Deed or Easement to the Department or (2) by the vendee conveying his interest to the vendor or to the Department by quitclaim deed or other appropriate instrument. Such quitclaim deed or other instrument, if made to the vendor, should be recorded prior to the closing of the transaction.

11.05 PENDING ACTIONS

Any pending court action involving an interest in right of way to be acquired should either be dismissed, or the parties to the action should join in the execution of the Deed or Easement, or such parties should deliver to the Department a quitclaim deed or other appropriate release. Seek input from the Assistant State Negotiator where uncertainty exists.

11.06 PUBLIC UTILITY EASEMENTS

As a rule, public utility easements over property acquired for right of way need

not be considered in clearing subordinate interests as they will be extinguished in connection with the removal of utilities from the right of way or will be permitted to remain in effect if occupancy of the highway right of way by the utility is not inconsistent with the operation of the highway. Seek input from the Assistant State Negotiator where uncertainty exists.

11.07 PRIVATE EASEMENTS

All easements considered adverse to the use and occupancy of the highway right of way should be cleared by negotiation with the owners of such easement rights. Easements falling in this category may include driveways, private roads, private water lines, drainage easements, etc. Such easements may be cleared by providing substitute easements or by cash payment based on appropriate appraisals. Care should be taken to examine such easements to determine whether access is being severed or affected by the acquisition. Seek input from the Assistant State Negotiator where uncertainty exists.

11.08 COVENANTS, CONDITIONS, AND RESTRICTIONS

Title may be taken subject to the conventional type of tract restrictions, provided that the nature and effect of such restrictions are known and considered. Unusual covenants or conditions whereby land is conveyed or restricted for a specific use, such as parks, schools, hospitals, railroads, etc., shall be carefully considered, particularly as to the possibility of forfeiture of title upon breach or violation. Such conveyances may have reversionary clauses; if so, quitclaim deeds or other suitable releases should be secured in order to clear such rights of reversion. In cases of uncertainty regarding the title to such properties, the seek input from the Assistant State Negotiator before proceeding with closing the claim.

11.09 CITY AND COUNTY TAXES

G.S. 136-163 authorizes the Department to prorate ad valorem taxes between it and the property owner. City and County Taxes are the responsibility of the Department from the time a deed is recorded or the date of taking to the end of the year in which the acquisition occurred. The remainder of the current year taxes, and all back taxes, should be paid by the property owner except for eligible deferred and recapture taxes authorized under G S 136-121.1.

The Department only pays property taxes when it acquires right of way or residues. It does not pay property taxes on drainage, utility, or temporary easement or when control of access only is acquired.

In the case of a total acquisition or a partial acquisition involving substantial

compensation, if the taxes are due, the total amount of taxes should be paid out of the settlement proceeds by the closing attorney and the paid receipt submitted to the Division R/W Agent with the closing papers.

If the taxes were paid by the owner prior to closing, the closing attorney should submit a copy of the paid tax receipt to the Division R/W Agent with the closing papers.

If the taxes are not due, the closing attorney should withhold from the settlement proceeds or collect from the owner an amount equal to the entire prior year tax bill. This withheld or collected amount should be forwarded to the Division Right of Way office with the closing papers. The Division Right of Way Agent shall forward the check for the taxes, along with [FRM14-E](#), to the Administrative Unit in the Central Right of Way office. This check will be placed in escrow until the taxes are due and the property owner should be instructed ([FRM11-A](#)) to send his tax notice to the Division Right of Way office as soon as it is received so the escrowed taxes can be paid and the owner can be reimbursed his/her prorata share.

NOTE: In the case of escrowed funds for property taxes, the Administrative Unit now maintains a log of all funds submitted to the Central, R/W Office. In the fall of the year, the Administrative Unit will request that the Division RW Office obtain a copy of the tax bills for all parcels where escrowed funds were submitted. These bills should be promptly submitted for proration ([FRM11-B](#)) so that the Department may pay them and not incur any late payment penalties.

In the case of a partial acquisition involving minor compensation when the taxes are due, the closing attorney or Right of Way agent may instruct the property owner to pay the taxes and then forward the paid tax receipt to the Division Right of Way office. When the taxes are not due, the property owner should be instructed to pay the taxes when they become due and then forward the paid tax receipt to the Division Right of Way office.

On claims where the only acquisition is control of access, there will be no proration of taxes.

The proration of property taxes by the right of way agent or the closing attorney should be avoided if possible. The "General Instructions to Closing Attorneys" ([FRM12-G](#)) does provide for the proration of taxes by the closing attorney where the tax liability for the whole tract is substantial when compared to the amount of settlement involving a partial acquisition and poses a hardship on the property owner to pay the entire tax. Note: If the closing attorney is permitted to prorate taxes at the closing, the Division RW Agent should promptly send [FRM11-B](#) to the Administrative Unit, so the Department may pay its share of the taxes due. If the tax bill has not yet been sent to the owner, the Division RW Agent should

sent a memo to the Administrative Unit indicating that taxes were prorated at closing and that the Department should follow up in the fall of the year by paying its share of the taxes. This memo will be kept with the escrowed taxes and dealt with by the Administrative Unit in a similar manner as escrow submitted.

The proration of the property taxes, no matter which of the above methods is used, will be based on the value of the property acquired as opposed to its total value and upon the respective periods of ownership during the current year between the property owner and the Department. Reimbursement to the owner will be determined by a proration of the present taxes due at the current or adjusted tax rates for that portion of the year that he/ she was not in ownership. The property owner should be requested to submit his tax notice or paid tax receipt to the Division Right of Way office upon receipt from the tax office. This should be done by a letter at the time of closing or the time the property is condemned ([FRM 11-A](#)). If the warrant is sent by the Division Right of Way Office, [FRM12-E](#) will be used, except for claims involving only a Temporary Easement where a [FRM12-EE](#) will be used. [FRM11-A](#) will be necessary for claims when the closings are handled by the abstracting attorney and also for condemned claims. The [FRM12-E](#), [FRM12-EE](#), or [FRM11-A](#) will be placed in the s drive in the parcel closing folder.

The tax notices/receipts received in the Right of Way office should be checked by the Agent who handled the claim to insure they cover the property acquired.

The Agent should complete [FRM11-B](#), place it and the scanned receipts/notices in the s drive in the parcel tax proration folder, and send an email to the appropriate Administrative Unit personnel.

A review of the notice or receipt should be made to see if the payee is the same as the name of the claimant, any changes of address of the owner, the correct social security number of the payee, etc.

The notice or receipt should cover only the area shown on the approved appraisal. If it covers more than the total area of the claim affected by the taking, this should be noted on the cover letter. The taxes will then be prorated and the owner will be reimbursed according to the aforementioned proration. A payment will then be sent to the tax office.

When unusual situations occur such as annexations, etc., special instructions from the Raleigh Central office will be needed. No taxes will be paid on property annexed into a municipality after it has been acquired by the Department. For property annexed before acquisition, the property owner should pay the taxes and then be reimbursed by the Department.

11.10 DEFERRED TAXES

In North Carolina, a property may be taxed at a lower rate by the County Tax Assessor under certain rules. This is generally called “Deferred Taxes”. Typically, the owner will pay a lower tax rate as long as the property is maintained under a certain conditions, such as farm land, or timber land. The lower rate may also apply so long as there is a certain amount of acreage. When a portion of the property is sold, the tax office will calculate the amount of taxes that the owner “would have” paid at the normal rate and require the owner to pay this amount. In addition, the Tax Office may determine that the remaining property, located outside the right of way, is no longer eligible for deferred tax status and require payment for that area also.

Typically, the Department will pay the amount charged by the Tax Office as a result of the acquisition. The Department pays the amount of deferred taxes due for the current year and former 3 years. The Department will also prorate the taxes due for the right of way acquired.

When the Department settles a claim where a portion of a property in deferred tax status is to be acquired as right of way, the agent should contact the county tax office and request two items of information:

1. Find out if the remaining property’s deferment lost? That is, is the remaining property allowed to continue in a deferred tax status?
2. What is the amount due for the loss of the deferred status? The tax office should provide a statement that itemizes the amount due for each year.

The agent should make every effort to pay the deferred taxes at closing. With proper documentation, the agent may include the Tax Collector as a separate payee on the final report, or, if the settlement is being paid to the closing attorney, the agent may include the tax due in the check being paid to the closing attorney. The taxes must be coded in a separate line on the [frm12-a](#) from the settlement amount.

If the deferred taxes are not paid at closing, the Agent should complete [FRM11-B](#), place it and the scanned receipts/notices in the s drive in the parcel tax proration folder, and send an email to the appropriate Administrative Unit personnel.

If a claimant disagrees with the Department’s proration of property taxes, the claimant has the right of appeal to the Manager of Right of Way, the Chief Engineer, or the State Court and Federal Court, if necessary. The claimant also has the right to be represented by legal counsel or other representatives in connection with his appeal but solely at the claimant’s expense.

11.11 FEDERAL AND STATE INCOME, SALES, AND ESTATE TAXES

Federal and state income, sales, inheritance, gift, and franchise taxes, and the like, do not constitute a lien upon property. These taxes may be ignored unless there is a judgment or other lien for such taxes on record, in which case such liens should be cleared by the grantor upon closing.

11.12 LISTING TAXES AFTER DATE OF TAKING

In those instances where an entire property has been acquired by the Department, either through closing or condemnation, the claimant should not list that property for taxes since the title at listing time vests in the Department. This may save the owner from paying a tax actually not due and may prevent confusion in the tax assessor's office. The Department should not honor any tax statement rendered by a city, town, or county for taxes listed by a grantor after the date of taking. **The Department does not pay property taxes on property it owns as of January 1st.**

11.13 ASSESSMENTS

Where an entire property is taken, all special assessments, such as paving, water, sewer, drainage districts, etc., shall be paid in full by the grantor, including any future and unpaid installments thereof (may be paid out of the closing proceeds by the closing attorney). In the case of partial takings, the grantor will not have to pay all assessments, provided that the remaining area is of sufficient value to satisfy such assessments and other liens not to be cleared.

Chapter 12 CLOSURE AND DELIVERY

12.01 GENERAL PROCEDURE

Immediately after a settlement has been reached and all necessary instruments have been obtained, the Right of Way Agent will prepare a Final Report consisting of all supporting documents. The Final Report will be reviewed and approved by the Division R/W Agent or designated DOT R/W Project Manager and transmitted to the Administrative Unit for processing. The Final Report will be checked by the Administrative Unit, and if approved, will be submitted to the appropriate persons for approval for payment. After this final approval, a warrant for payment will be secured from the Fiscal Section and the checks are printed in the appropriate Division Right of Way office.

After the check prints, the Right of Way Agent will arrange for the closing. Closings are completed in two ways:

- (1) The Agent records the instruments and delivers the checks or
- (2) the closing attorney records the instruments and delivers the checks.

In order to insure good public relations, and as a matter of good business practice, it is essential to make payment to the property owner promptly after the settlement has been reached. The property owner should be given a realistic timeframe within which the closing will take place. The Agent and Division R/W Agent should monitor the status of the final report processing to insure a prompt closing, and should investigate any perceived delays after the transmission of the final report. Following recordation and delivery of payments, the Agent will prepare and submit a closing package.

12.02 ACCEPTANCE OF INSTRUMENTS

The Manager of the Right of Way Branch, Assistant Manager of the Right of Way Branch, State Negotiator, Assistant State Negotiator, Area Negotiator and Division R/W Agents are authorized to accept right of way instruments. R/W instruments should be signed in the accepted by section **only after the final report has been checked by the Administrative Unit, and the FRM12-A has been signed by all necessary managers.** Generally, this will be after the check prints in the Division R/W Office.

12.03 EXCISE TAX (REVENUE STAMPS)

[General Statute 105-228.30](#) requires every person conveying an interest in real estate located in North Carolina other than a governmental unit or an instrumentality of a governmental unit to pay an excise tax, commonly referred to as revenue stamps or deed stamps. In private real estate transactions, the seller typically pays these fees. However, the Department will pay the excise tax or revenue stamps for any acquisition involving monetary consideration. An exception is located in [NCGS 105-228.28](#); the exception is that excise tax or revenue stamps do not have to be paid on acquisitions from any governmental unit or an instrumentality of a governmental unit. No excise tax/revenue stamps are to be paid on donations.

The amount of the excise tax or revenue stamps due should be included in the payment requested through the final report. The amount to be paid is one dollar (\$1.00) per each five hundred dollars (\$500.00) or fractional part thereof of the amount paid to the owners.

The total amount of the excise tax/revenue stamps due and the recording fees should be indicated on the Final Report Checklist as well as on the Final Report. Excise tax/Revenue stamps are not applicable on secondary road agreements that do not involve any monetary consideration. Furthermore, no revenue stamps are paid on donations.

For any unusual circumstances regarding revenue stamps, the Division R/W Agent or Consultant Project Manager should contact the Assistant State Negotiator.

12.04 PREPARATION OF THE FINAL REPORT

Final Reports are used for all settled claims, as well as other payments such as release fees, recording fees, copy charges, borrow or fill material, payment for moving, removal, demolition, or alteration of buildings or other improvements not covered by contract. damage claims, etc. Secondary Road Recording Final Reports are discussed at the end of this section. Final reports are to be placed in the parcel final report folder on the s (groups) drives.

All final reports must have [FRM12-B](#), [FRM12-A](#) and any other forms and documents necessary to process the payment.

All Final Report folders should contain the following documents

1. Final Report Checklist ([FRM12-B](#))

- a. all questions answered
 - b. signed by Agent and Division R/W Agent or DOT R/W Project Manager
2. Final Report ([FRM12-A](#))
 - a. all questions answered (see below)
 - b. signed by Agent
3. All Diaries ([FRM 4-C](#))
 - a. all entries must be complete and signed
 - b. the affidavit section at the top & bottom of [FRM4-C](#) must be signed
4. All correspondence (scanned and named as Gencor)
5. Any other pertinent documents scanned and named Gencor-_____
6. Offer to Purchase ([FRM10-B](#))
 - a. areas must match latest approved appraisal/claim report
 - b. all improvements being acquired must be shown
 - c. signed/dated by Agent
7. Memo approving offer to purchase remnant (if applicable)
8. Preliminary Certificate of Title ([FRM6-C](#)), if required
 - a. parcels numbers correct
 - b. parties having an ownership interest listed in title
9. Instrument(s) of conveyance (scanned)
 - a. properly signed/notarized
 - b. names typed in heading and under signatures
 - c. complete mailing address for each grantor in heading
 - d. amount of revenue stamps inserted, if applicable
 - e. all appropriate [clauses](#) inserted
10. Scanned plan revision sketch, if plans are in error
11. Taxpayer Identification ([FRM4-M-ROW](#)), completed and signed
12. Residue Card & Sketch [FRM14-X](#) and [FRM14-W](#), if applicable
13. Administrative Adjustment ([FRM10-F](#)), if applicable.
14. [FRM4-N](#) (Right of Way Claim Report), if applicable
15. Copy of Trust Agreement or Power of Attorney, if applicable

The Final Report ([FRM12-A](#)) should be completed as follows:

CLAIM OF: (name of owner as shown on plans). If the name changes, the original name of the claimants will be shown in parenthesis after the current name.

DATE: Insert the final report is prepared by Agent

WBS Element: Insert the wbs element used for r/w acquisition

TIP/PARCEL: Insert the parcel number (Example: R-2633B 001); only one parcel per final report

COUNTY: Insert the county where the property is located. If the property is located in two counties, list both counties (Example: Pender/Onslow)

PAYMENT FOR: Check the appropriate box; also check if it is a consultant claim, or donation

TOTAL DISBURSEMENT: The total amount DOT is paying to all payees plus recording

Payee Box

PAYEE/ADDRESS Enter the name and address of the payee(s). The address must correspond with the payee's address shown on the [FRM4-M-ROW](#). The marital status of an individual as payee(s) should also be shown.

- When the instrument specifies that the payment is to be made to a certain individual or entity, such as the closing attorney, the name of that individual, entity, or closing attorney is listed as the payee
- When a property is held by a trustee under a trust, the payment is made to the trust, unless specified otherwise on the instrument
- When a property is held by a partnership, the payment is made to the partnership, unless specified otherwise on the instrument
- Churches or institutions where trustees involved: The name of the church or institution and their tax identification number should be used rather than the names of the trustees.

\$: Enter the **total consideration** to be paid to the payee

TIN# is the payee's number as shown on the [FRM4-M-ROW](#); all payees, including non-profit/tax exempt organizations, must have a tax identification number in order for a warrant to be issued for payment and without an identification number being submitted, no warrant will be issued by Fiscal.

If the Closing attorney is to disburse funds with warrant issued in the name of the closing attorney, the tax identification number for attorney's trust account is to be

used.

DOC# is left blank

Vendor # is the number assigned by the fiscal section, enter if known

Acct Assignment Payee (See samples & instructions in Chapter 12 forms)

GL Code – Cost Center-WBS-Function Code-TIP/Parcel-Amount

- Choose from the list of available GL codes, or contact the Administrative Unit if there are questions
- Each Division R/W Office has a cost center. The cost center inserted is for the division r/w office where the project is located, whether acquired by that division r/w office or another
- WBS: the wbs authorized for r/w acquisition
- FUNC: Either 2310 or 2300 – see GL Codes in Chapter 12 forms
- Parcel: Example R-2633B 001
- Amount: total amount due to payee

PAYEE #2 (Set up for Register of Deeds)

PAYEE/ADDRESS. Enter the name and address of the register of deeds. The address must correspond with the list provided and updated by the Administrative Unit.

\$: Enter the **total payment to the Register of Deeds** - this includes revenue stamps

TIN#: Enter N/A

DOC# is left blank

Vendor #: Enter the number assigned by the fiscal section

Acct Assignment Payee (Register of Deeds):

GL Code – Cost Center-WBS-Function Code-TIP/Parcel-Amount

- GL Code for Register of Deeds is 54110009
- The cost center inserted is for the division r/w office where the project is located, whether acquired by that division r/w office or another
- WBS: the wbs authorized for r/w acquisition
- FUNC: 2310
- Parcel: (Example R-2633B 001)
- Amount: total amount due to Register of Deeds including revenue stamps

CHECK PRINT LOCATION: (Enter the Division R/W Office where the check should print.)

REMARKS - In this space, an explanation should be given of any pertinent changes in property lines, areas, location of building, ownership or any other feature that may differ from the plans, so that the person who checks the Final Report assembly against the plans will have correct information. Any other pertinent information regarding negotiation of the claim or processing of claim should be noted here.

RECOMMENDED – signature and typed name of the Right of Way Agent who settled the claim and who is submitting the Final Report assemblage will sign here.

APPROVED - the Assistant Manager or Manager of Right of Way will sign here.

APPROVED - Director of Field Support will sign here all claims having a total consideration/payment to property owner(s) exceeding \$500,000.00.

APPROVED – Chief Engineer must sign here for all claims having a total consideration/payment to property owner(s) of 1 million or more.

If the settlement amount is to be split up among two or more payees, the additional payees are listed in [FRM12-AA](#)

12.05 PROCESSING OF THE FINAL REPORTS

Once the Agent is satisfied with the completeness and correctness of the final report, he or she will sign the [FRM12-A](#), and [FRM12-B](#) and notify the Division

R/W Agent. The Division R/W Agent or DOT R/W Project Manager will review the entire final report and supporting documents and if he/she approves, he/she will sign the [FRM12-B](#), and check the e-checklist box, which once checked, will produce the current date. The Division R/W Agent or DOT R/W Project Manager will then notify Administrative Unit and other required persons, that the final report is available for processing. The Division R/W Office should make sure that all reports (currently the Report B, and Monday Morning Report) are updated to reflect the settlement, and transmission of the final report to the Administrative Unit.

Upon notification that a Final Report is available, the Administrative Unit checks the final report against both the open and closed claim files as a precaution to avoid duplication of payment. The primary focus will be to examine the execution of the instruments, correlation of the areas and amounts in the approved appraisal to the offer; and the [FRM12-A](#). If any errors are present, the Administrative Unit will notify the Agent and Division R/W Agent (or DOT R/W Project Manager) to make the necessary corrections so that processing may be completed.

The claim will be referred to the Manager of Right of Way or Assistant Manager, and others as needed, for review and approval of the settlement.

After approval, the check will be either (1) printed in the respective Division R/W Office or (2) printed in the Raleigh Office and mailed to the appropriate R/W Agent.

NOTE: Final Reports for donations will be completed as stated above, except there will be no payee #1.

SECONDARY ROAD RECORDINGS

When it becomes necessary to record secondary road right of way agreements, the agent will complete [FRM12-A-SR](#). Page 1 of this form lists all the agreements to be recorded, the amount to record each agreement, and the total recording amount. Page 2 is to be completed and signed in similar fashion as stated above. See example in the Chapter 12 forms.

12.06 DELIVERY OF WARRANTS

Once the check has printed and all necessary approvals have been obtained for the closing of the claim, the Division R/W Agent will sign the original instrument on the line that reads ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY: _____.

Generally, all claims with a consideration under \$25,000 will be closed by the Agent. However, if there are complex or unusual factors involved in the claim, and a preliminary title report was obtained, the Division R/W Agent may have the claim closed by the attorney who provided the title report, even if the consideration is less than \$25,000.

For claims to be closed by the R/W Agent, the Agent should

1. Make sure the instrument has been signed in the "Accepted By" section
2. Re-check the public records to make sure there have been no changes that affect the title to the property
3. If there are no changes, take the check payable to the Register of Deeds and present it along with the instruments to the Register for recording. Some counties require or request that instruments be presented to the county tax office prior to recording. The Agent should comply with this requirement/request whenever possible.
4. If there have been changes, such as a new deed of trust, judgments, or an outright conveyance of a portion or all of the property, the Agent shall not record the instrument, but consult the Division R/W Agent for further instructions.
5. Once the instruments are recorded, the Agent may deliver the warrants to the payees. It is a good practice to have the original recorded instruments in hand prior to the delivery of the warrant. The warrant may be mailed regular mail by using [FRM12-E](#) or [FRM12-EE](#), whichever is applicable, OR, delivered in person to the payee using [FRM12-D](#). [FRM12-D](#) is to be completed by the Agent and signed by the payee.
6. If the check is delivered in person using [FRM12-D](#), the agent should mail the owner [FRM11-A](#), if applicable.
7. Mail or deliver a stamped Property Owner survey [FRM12-K](#) to the owner.

For claims to be closed by the Closing Attorney, the Division Right of Way Agent and the Agent who negotiated the claim should review the file to insure that any special instructions or circumstances involving the closing be included in the transmittal letter. It is advisable that a sheet of notes indicating such things as contact information for the payee, special instructions regarding deed of trust and judgment payoffs, payment or collection of property taxes, accompany the [FRM12-F](#). The Agent should:

1. Make sure the instrument has been signed in the "Accepted By" section

2. Send [FRM12-F](#), [FRM12-G](#), [FRM12-D](#), [FRM6-D](#), a copy of the [FRM4-M-ROW](#) previously signed by the payee, the instruments of conveyance, any special notes, and the checks (both to the payee and Register of Deed), to the attorney who furnished the Preliminary Certificate of Title for the closing of the claim. A copy of the transmittal letter to the closing attorney will be sent to the claimant giving notification that the attorney has the warrant and other closing documents and that the claim is ready for closure.

If a property owner is represented by counsel, the closing transaction should be made with the attorney for the property owner and that attorney would receive a copy of the transmittal letter as notification of the impending closing. The transmittal letter requests that the claim be closed within ten days, and the Division R/W Agent should log the date the closing instruments are due back in the Division Right of Way office. If the claim is not closed within ten days, the Division R/W Agent will notify the Agent who handled the claim so that he can contact the closing attorney to see why the claim has not been closed and offer assistance to expedite its closure. The Right of Way Warrant Delivery Certification form must be signed by the party delivering the check and by the payee who will be provided with a copy of the form. Any deductions or charges from the proceeds of the check must be itemized on the form. Upon receipt of the closing papers back from the attorney, a Real Estate Tax Letter ([FRM11-A](#)) will be sent to the property owner if applicable. The Agent will also mail or deliver a stamped Property Owner survey [FRM12-K](#) to the owner.

For the following types of payment, the Raleigh office will mail warrants directly to the payee:

1. Payment to appraisers for services rendered
2. Payment to house moving contractors for the relocation of buildings
3. Payment for property tax reimbursement.
4. Payment for asbestos inspections, abatement and demolition
5. Payment for grave inspections and relocations

For claims where there was a donation, the closing will be performed in a similar manner as described above. If the consideration that would have been paid was over \$25,000, it may be advisable to obtain a title report and have the abstracting attorney close the claim. Although there is no consideration to be paid, the abstracting attorney may have to deal with property tax liens or other liens. If the projected consideration is \$25,000 or less, the agent may record and close the claim. In either situation, [FRM11-A](#) should be sent to the owner, if applicable.

Property Tax issues at closing: NCGS 161-31 permitted some Counties to refuse to record a deed if there are overdue real estate taxes. This has

presented some challenges, especially with smaller dollar claims being recorded by the Agent. In order to avoid this situation, the Agent should check the property tax status of the parcel prior to requesting the final report, and if property taxes are overdue, advise the property owner that they will have to pay the taxes before the deed can be recorded. If the property taxes are not paid, and the deed cannot be recorded, the Agent should seek advice from the Assistant State Negotiator. The Agent may have to cancel the checks and request condemnation.

12.07 ATTORNEY CLOSINGS

Typically, the Closing attorney will do the following;

1. Re-check the public records to make sure there have been no changes that affect the title to the property
2. If there are no changes, take the check payable to the Register of Deeds and present it along with the instruments to the Register for recording.
3. If there have been changes, such as a new deed of trust, judgments, or an outright conveyance of a portion or all of the property, the Attorney will not record the instrument, but consult the Division R/W Agent for further instructions.
4. Arrange for a meeting with the payee to deliver the funds. Note: the payee may need to endorse the warrants over to the closing attorney, so that the attorney may pay off deeds of trust, judgments, or taxes
5. Complete [FRM12-D](#), [FRM6-E](#) (invoice), and submit to Division R/W Agent along with recorded instruments.

Unless prior approval has been given, all liens and encumbrances must be satisfied prior to closing the claim. In some cases, closing attorneys may submit closing papers to a Division R/W Agent with the notation that the deed of trust is paid in full but not yet cancelled. Neither the Agent nor Division R/W Agent should submit the attorney's invoice until the paid deed of trust is cancelled of record. This subject is covered in more detail in Chapter 11 of this Manual, "Clearance of Subordinate Interests".

12.08 RECORDING OF INSTRUMENTS OF CONVEYANCE

G.S. 47-27 requires that all deeds and/or easement or any other agreement granting or conveying an interest in land to the Department of Transportation be recorded in the office of the Register of Deeds of

the county where the land affected is situated. In those rare instances where a property may lie partly within two counties, the instrument of conveyance is to be recorded in both counties. Instruments are to be recorded without delay and before delivery of the warrant.

In certain situations, when time is of the essence, it may be possible to obtain a check for recording purposes from the Division Engineer.

12.09 SUBMITTAL AND DISPOSITION OF CLOSING DOCUMENTS

After a claim has been closed through the Division Right of Way office or by a closing attorney, the following documents and information are to be prepared, placed in the parcel closing folder on the s (groups) drive. The Appraisal Unit should also be notified that the claim is closed, so that they may close their files. In addition, [FRM6-E](#) should be mailed or faxed to the Attorney General's Office, Transportation Section for payment.

1. [FRM12-H](#) - Closing Checklist
 - a. all questions answered
 - b. signed by R/W Agent and Division R/W Agent (or DOT R/W Project Manager)
 - c. any special notes stated in the remarks section
2. The recorded instrument(s) of conveyance
3. [FRM12-D](#) - Signed Warrant Delivery Certification, if attorney closing
 - a. signed by attorney and payee
 - b. shows distribution of payment
4. [FRM6-D](#) - Final Opinion of Title, if attorney closing
 - a. Should show that any deeds of trust are paid AND cancelled
5. [FRM6-E](#) – Attorney Invoice, if attorney closing
 - a. Checked for accuracy
 - b. Properly coded
6. [FRM12-E](#), [FRM12-EE](#), or [FRM11-A](#)
 - a. signed by R/W Agent
7. NC-1099NRS (if applicable)

Please note that there will be no closing for condemned parcels.

12.10 PROPERTY OWNER SURVEY

Promptly after the claim is closed or the condemnation action is filed, the Agent will mail or deliver a [FRM12-K](#), to the owner. This form is a survey that the owner is requested to complete a return. Completed and returned forms will be reviewed by management and any necessary follow up will be conducted.

Chapter 13 CONDEMNATION

13.01 CONDITIONS PRECEDENT TO CONDEMNATION

It is Department policy to make every reasonable effort to acquire rights of way through negotiation. When necessary, the Department will resort to the exercise of its power of eminent domain, or condemnation, to acquire the remaining rights of way. Condemnation should not be instituted on a claim until the property owner has been made an offer of just compensation based on an approved appraisal and has been allowed a period of at least 30 days in which to consider the offer. When some extreme circumstances dictate, such as an emergency or a protective acquisition, condemnation may be instituted immediately after an offer of estimated compensation has been made to the owner. In all situations, the Board of Transportation must have authorized the acquisition of the property before condemnation can be filed.

13.02 DETERMINATION TO CONDEMN

Prior to condemnation, the Area Negotiator will review each outstanding claim with the Agent who handled the claim and submit a completed Condemnation Review Form ([FRM10-F](#)) to the Assistant State Negotiator, as explained previously in Chapter 10. Based upon the inability to reach a settlement during the time frame for a negotiated settlement and the action recommended in the Condemnation Review Form, acquisition through the institution of condemnation is the last resort in completing right of way acquisition on a project. The agent should note and act upon any recommendations contained in the [FRM10-F](#).

13.02A COMPLETION OF THE A.G. INFORMATION FORM AND CHECKLIST

When the prospect of a condemnation action seems apparent, the Agent shall complete a Condemnation Checklist/A.G. Information Form ([FRM13-A](#)). This form is primarily a checklist to insure that the Attorney General's Office will have all pertinent information at hand for preparation of the condemnation documents. This report shall be completed and dated so that the attorney will know how current the information

is. **Note that post office boxes are not acceptable addresses for instate owners. Street and road addresses for all in-state owners must be used to**

insure proper service, which involves hand delivery of the condemnation papers by the Sherriff's Office, to the property owners.

13.03 REQUESTS FOR CONDEMNATION

When it becomes apparent that a settlement with the property owner is not going to be worked out, the Agent should prepare a final report in a similar manner as a Final Report on a negotiated settlement as set out in Chapter 12. The request should be made on the Condemnation Final Report form ([FRM13-B](#)) as shown as follows:

Claim of (name) . The name used should be the same shown on the plans. If the name changes, the original name of the claimants will be shown in parenthesis after the current name.

Enter the **Date** of the final report.

Insert the **WBS Element**, which is the number shown on the right of way authorization. In some instances for fiscal reasons, the wbs element may change or it may be necessary to make charges to another wbs element or code. In these cases, the previous project number should be shown in parenthesis following the correct current project number.

Insert the **TIP/Parcel Number** of the subject parcel.
Insert the **TIP ID Number** for the project.

Insert the **County** in which the property is situated. If the property happens to be located in two counties, the names of both counties should be shown.

Insert all **Plan Sheet Number(s)** that show where the subject parcel

PAYMENT FOR: After As a deposit of estimated compensation for condemnation in civil action of Department of Transportation vs., enter (first named owner in [FRM6-c](#))". Regardless of the number of persons shown in the title opinion as having an interest, and add the wording "et al." after it.

PAYEE/ADDRESS: Clerk of Superior Court, name of county County should be inserted as well as the address of the Clerk's Office.

\$: Enter the **total consideration** to be deposited in this condemnation action. The amount shown should, in all instances, be the amount of the approved appraisal, unless there is a deduction for clean-up of contaminated soils. The total amount of the deposit N/A

DOC# is left blank

Vendor # is the number assigned to the Clerk of Court for that County

Acct Assignment:

GL Code – Cost Center-WBS-Function Code-TIP/Parcel-Amount

54110009-# for the division where the project is located-WBS Element-2310-TIP/Parcel-deposit amount

CHECK DELIVERY LOCATION: always check HQ

REMARKS

Any unusual aspect that that needs explanation; any requests for expedited processing

RECOMMENDED - the Right of Way Agent who is submitting the Final Report places his/her electronic signature here and types their name underneath

APPROVED

These blocks are signed by the appropriate personnel in Raleigh

13.04 REQUEST FOR CONDEMNATION ASSEMBLY

All condemnation final reports folders are located on the s (groups drive) in the division/TIP/county/parcel and should contain the following documents:

1. A Condemnation Final Report Checklist/ AG Information Form ([FRM13-A](#)) signed electronically by the Agent who negotiated the claim and the Division R/W Agent/DOT Project Manager
2. [FRM13-B](#) discussed above
3. [FRM4-C](#) and any other diary sheets. Since no settlement was negotiated, the affidavit "TO BE COMPLETED BY SUCCESSFUL NEGOTIATOR" on the [FRM4-C](#) does not need to be signed.
4. Gencor: All original correspondence accumulated with regard to the claim.
5. [FRM10-B](#) Summary Statement/Offer to Purchase
6. [FRM6-C](#) with copies of the owner's deeds
7. [FRM4-A](#) Existing Right of Way Abstract
8. [FRM10-F](#) (complete and signed)
9. E-Checklist with box checked by the Division Agent when the final report email is sent

13.05 PROCESSING OF REQUEST FOR CONDEMNATION

When the above items are complete, checked by the Division R/W Agent/DOT Project Manager, and ready for processing, the Division R/W Office shall send an email to the appropriate Administrative Unit personnel with the subject ROWEFS and indicating that the final report is available for processing. Upon receipt of the email, the Administrative Unit will begin processing. The final report will be checked against both the open and closed claim files as a precaution against the possibility of duplication in payment. The assembly will then be further checked by the Administrative Unit for correctness and against the project plans.

The claim will be referred to the Manager of Right of Way or Assistant Manager and others, as needed, for review and approval for proceeding with condemnation on a particular claim. After approval, a warrant for the amount of deposit to be placed in court will be obtained from the Fiscal Section. The warrant will then be sent to the Attorney General's Office, Transportation Section, for their preparation and filing of a Declaration of Taking on that claim by a specified date. The projected date of condemnation will be set by the Attorney General's Office and the Raleigh RW Office will be notified. The Raleigh RW Office in turn will email [FRM13-M](#) to the Division R/W Agent and place the form in the final report folder. [FRM13-M](#) states the date of projected condemnation. The Division R/W Agent should then send a letter to the claimants ([FRM13-F](#)) advising of the Department's intent to proceed with condemnation and the date on which the condemnation action will be filed. The letter will also specify the amount, generally the approved appraisal offer, which will be deposited with the Clerk of Court on that particular date as an estimate of just compensation for that claim. If a lease involved, a copy of the letter of transmittal to the property owner/lessor should be sent to lessee. The letter also requests that the owner to contact the Division R/W Agent within a specified time, typically 10 days, should the owner be willing to discuss the matter further.

The Attorney General's Office prepares the Declaration of Taking and requests from the Manager of Right of Way, a cadd generated plat depicting the areas to be acquired.

Condemnation actions usually are mailed out on a Wednesday or Thursday so that the Clerk of Court receives the package and filed it on the following Monday.

13.06 NEGOTIATION OF CLAIM AFTER REQUEST TO CONDEMN

Even though it may appear that negotiations have broken down after submitting a request for condemnation, the Agent may continue to negotiate with the property owner in an effort to reach a settlement until condemnation has been actually filed. If after receiving notification of intent to condemn, the property owner may

desire to reach a settlement with the Department. Sometimes an owner may wish to discuss the matter further even before receiving the letter of intent to condemn. In the event a settlement is reached between the time the request for condemnation is sent to the Administrative Unit and the date of filing, the Division R/W Agent should immediately email the appropriate persons in the Raleigh R/W Office who will complete a condemnation termination notice (**Recall**) and advise the appropriate sections to cease their efforts toward processing this claim for condemnation. The Division R/W Agent will be emailed the termination notice.

Division Agents may also recall a request for deposit final report where a valid entry agreement is obtained. However, if you do not request a recall by email and receive confirmation, the claim will proceed to condemnation.

The exception is where the Department must file condemnation to facilitate relocation of a displacee. The Department cannot require a displacee to move until it owns the property by closing or condemnation. So there may be situations where the Department would not want to stop the condemnation process, even if an entry agreement is obtained.

Keep in mind that entry agreements are treated like deeds/easements, in that their language should not be modified in a way that may be detrimental to the Department. Any language additions/deletions/changes should be reviewed with R/W Supervisors and/or the AG's Office.

Obtaining an entry agreement does not guarantee a settlement and there may be some situations where an entry agreement is obtained, the condemnation is recalled, and settlement cannot be reached. In these cases, a new request for condemnation will need to be resubmitted for these parcels, just like a new request for deposit.

Please note the following: In order to cease processing of a condemnation final report,

1. the claim must be settled (signed agreements in hand) prior to the condemnation package being mailed out by the Attorney general's office
2. the Agent should also obtain a signed entry agreement since many times the condemnations action is being submitted to meet the schedule
3. The Raleigh R/W Office must be informed in writing (by email)
4. The Raleigh R/W Office must terminate the final report processing

The file will then be recovered from the Attorney General's Office and placed in the open claim file pending receipt of a Final Report for settlement from the Negotiating Agent. The warrant payable to the Clerk of Court, if issued, will be returned to the Fiscal Section for cancellation. A warrant payable to the owner will be secured after the Final Report for settlement has been received and processed.

Occasionally, negotiations may result in the likelihood of a settlement, but written agreements have not yet been secured. In these cases, the negotiating agent or Division Agent should immediately contact the Assistant State Negotiator and request the condemnation put on **HOLD**. The Assistant State Negotiator will contact the Attorney General's Office and request that processing be put on hold, so that a settlement can be reached. Parcels are generally put on hold for only 2 weeks, and by agreement with the Attorney General's Office, only the Assistant State Negotiator or higher level manager may request a hold. If the parcel is settled, the Recall process is initiated. If no settlement is reached, the parcel is condemned.

13.07 FILING OF CONDEMNATION ACTION

If the claim is not settled, the summons, complaint, declaration of taking, and notice of deposit, along with warrant for the amount of the deposit, will be sent to the Clerk of the Superior Court of the county in which the property is situated. The documents are typically mailed out on a Thursday so that they are received and filed on a Monday, the customary day for filing condemnations. In some situations, the documents may be hand delivered to the Clerk of Court's Office for immediate filing.

On the designated day for the filing of the condemnation action as requested by the Department, the Clerk will issue the Summons and file the Complaint and Declaration of Taking and Notice of Deposit. A copy of the Memorandum of Action called for in G.S. 136-104 will also be sent at that time to the Register of Deeds in the same county to be recorded among the land records of the county.

Each week, the Attorney General's office will send a list of parcels on which condemnation has been instituted to the R/W Unit, who will forward the list to the Division R/W Agents. The Division R/W Agent should check to make sure the parcels to be condemned are on the list. If the scheduled parcel was not mailed out for condemnation, the Division R/W Agent should attempt to find out and resolve any processing issues preventing condemnation. The Attorney General's Office also emails out a monthly list of all open condemnation cases.

13.08 VIDEOS OF PROPERTY

On the date of the condemnation, or as soon thereafter as is practical, the Agent should make a detailed video of the property. This video should include improved properties, as well as open land; the outside of any buildings, topographical features; existing rights of way, access, driveways, trees/landscaping and other features of the property which would have a bearing on the value of the property in a trial. The completed videos should be held in the Division R/W Office and made available to the respective Attorney General's Office, Raleigh or Asheville, to aid the attorney who will be assigned a particular claim in becoming familiar with the property while preparing for trial. The Agent should limit audio commentary to the facts and not opinions.

13.09 NOTICE TO OCCUPANTS TO VACATE

Promptly upon the filing of a Declaration of Taking and Complaint, the appropriate vacate notice shall be given to all parties owning personal property located within the taking. This notification will be given to property owners and tenants who are lawfully occupying real property as a home, farm, or business, to all owners of personal property which may be located in barns, outbuildings or other structures, and to the owners of advertising signs which are considered personal property. Copies of vacate notices to tenants should be sent to the respective property owners. Any exception to the requirement of a vacate notice shall be made by the Relocation Coordinator only in very unusual circumstances. Vacate notices are discussed in detail in Chapter 15 of this Manual.

13.10 NEGOTIATION AFTER CONDEMNATION ACTION FILED

Once the condemnation action has been filed, the Attorney General's Office should be involved in any efforts to settle the claim. Any contacts from the property owner or owner's attorney should be directed to the Trial Attorney in the Attorney General's Office who is assigned the case. The Trial Attorney may prefer that the Right of Way Office assist in settlement talks, or they may prefer to handle the matter themselves. **In any event, once condemnation has occurred, the Trial Attorney should take the lead in settling the claim. The claims should not be discussed with the owner or owner's attorney without the knowledge and approval of the Trial Attorney.**

In those instances where there are buildings and other improvements which have also been condemned, the property owner or the owner's legal representative should be advised, if not already, that these improvements may be retained for their retention value. The requirements for retention are discussed in Chapter 14 of this manual. The Agent should first discuss this matter with the Trial Attorney

before contacting or sending a letter to the owner. In no instance should a condemned building be offered for public sale while it is still occupied by the former owner.

It is permissible for the Agent to write any condemned owner, a letter if construction of the project will disrupt any private utility sources, fencing, driveways which will not be reconnected or restored, etc. The agent should point out the item or items to be disrupted by construction and advise the condemned owner that it will be his responsibility to restore or take care of same. The agent should write this letter so that the condemned owner will receive it in ample time to take care of the situation prior to the time construction of the project begins.

It is most important that the Right of Way Agent provide any needed assistance to the Attorney General's office on any claim which has been condemned. The Agent should promptly contact the Trial Attorney with any new information regarding the claim after condemnation is filed. Negotiating diaries will be available to the trial Attorney through the s (groups) drive.

13.11 RESPONSIBILITY OF AGENT UPON FILING OF ANSWER TO COMPLAINT BY PROPERTY OWNER

[G.S. 136-107](#) provides that any person named in and served with a complaint and declaration of taking shall have twelve months from the date of service thereof to file answer. For good cause, at any time prior to entry of a final judgment when an answer has failed to be filed within the twelve-month period, a judge may extend the time for filing an answer for 30 days. Upon filing of an answer by the property owner, the Deputy Attorney General will send by memo, a copy of the answer to the Division Right of Way Agent, the Area Negotiator, the State Locating Engineer (requesting a court map), and to the State Appraiser (requesting that he secure additional witnesses for use in trial if this has not already been done). An additional copy will be sent to the Manager of Right of Way with a request that the Deputy Attorney General be furnished with any file pertaining to the parcel, including appraisals that have not been previously forwarded to the Attorney General. The Division R/W Agent should forward to Location & Surveys, an abstract for the parcel.

Note: Once an answer is filed in the suit, the Area Negotiator will be the lead representative for the R/W Unit. The Area Negotiator will consult with the Trial Attorney to determine settlement prospects, appraisal needs, and possible mediation dates. The Area Negotiator will also seek to resolve issues that are preventing settlement, and attend Review Board meetings as needed.

13.12 MAPS IN CONDEMNATION SUITS

[G.S. 136-106](#) provides in part that within 90 days from the receipt of the answer by the property owner to the condemnation suit, the Department of Transportation shall file a plat of the land taken and such additional area as may be necessary to properly determine the damages. A copy of the plat shall be mailed to the parties or their attorney, provided however that the Department shall not be required to file a map or plat in less than six months from the date of the filing of the complaint.

Generally, at the time the owners file answer, the Deputy Attorney General will request that the State Locating Engineer have the Property Survey Division furnish an accurate map of the entire property. This map will show the area acquired together with any construction, drainage, and utility easements, temporary easements, control of access, or other interests in land acquired, and the location of improvements to the property. The map should also show the location and right of way of any public roads that were in existence prior to the taking. The bearings and distances of all property lines, right of way lines, or other easement lines should be shown on the map, together with appropriate areas. It will be the responsibility of the Agent to cooperate with the survey party in furnishing them any information that would be of assistance to them in making the survey. After the map has been prepared, a copy will be sent to the Division Right of Way Agent, who will review the map with the Resident Engineer in charge of construction of the project, to make sure that all slope easements, drainage easements, right of way lines, etc., are properly shown on the map and that the construction of the project is contained within the various easement lines indicated on the map. The accuracy of the map for court purposes is essential to insure the correctness of the areas being acquired and to prevent adverse issues and testimony in a trial if inaccuracies are found and not corrected. Should it be necessary to prepare and file a map prior to completion of construction on a particular property or parcel, the Resident Engineer should be cautioned to inspect the map very carefully and to make sure that the contractor confines construction operations within the limits of the right of way and easements shown on the map. Upon receipt of the completed map from the Property Survey Division, sufficient copies of the map will be sent by the Department's Trial Attorney, who has been assigned the claim, to the Area Appraiser. The Area Appraiser will have each appraiser check and update his/her appraisal to conform with the areas contained in the map and to consider whether the taking as shown on the map has any further effect upon the values contained in the appraisal of the property. In cases where revisions in the appraisal are made, the revised appraisal will be sent to the Area Appraiser by the appraisers of the property, and he will indicate whether or not a revised appraisal is approved and forward a copy of same to the trial attorneys.

Area Changes and R/W Revisions After Condemnation is Filed

Occasionally, after condemnation proceedings have been filed, plan revisions may significantly change the areas needed for the project. In these cases, the Division RW Agent and Area Negotiator should first discuss the plan revisions with the Trial Attorney and the Area Appraiser. If the Trial Attorney advises that settlement is not imminent, the Division Agent will have the appraisal updated (either through red-line or request to the appraisal section) to cover the additional area needed. Upon receipt of the updated appraisal, the Division R/W Agent will make the revised offer, keeping the Trial Attorney and Area Negotiator informed of the claim status. If the owners accept the new offer, a request for an additional deposit, along with properly executed [FRM13-L](#) and appropriate final report will be processed so a consent judgment finalizing the claim can be obtained. If the settlement based on the new offer is not possible, the Trial Attorney will file an amendment in the case and make an additional deposit to the condemnation suit. The check for the additional deposit will be sent to the AG's office, and an amendment will be made to the Declaration of Taking to cover the additional area. See also Section 4.17.

13.13 COMMISSIONER'S HEARINGS

Occasionally, the property owner or the Department may request that commissioners be appointed by the court to appraise and report their determination of damages sustained. If so, the Agent should make himself available, upon request of the Trial Attorney, to attend the commissioners' hearing for the purpose of furnishing information and providing assistance to the Trial Attorney.

13.14 MEDIATION

Mediation is an alternative dispute resolution procedure which the North Carolina General Assembly has enacted to assist the Judiciary in resolving and disposing of cases in litigation. All condemnation cases will be subject to mediation prior to the case being calendared for trial. Since trials are becoming increasingly more expensive, more burdensome and less satisfactory to parties involved in that process, mediation provides a framework to resolve the dispute or conflict more satisfactorily from a financial and emotional standpoint.

Mediation is a voluntary process, in that the participants must be willing to accept the assistance of the mediator if the dispute is to be resolved. The decision-making power is left in the hands of the parties with the conflict. The dispute is ended when the parties in conflict choose to resolve their differences.

Typically, the Area Negotiator will represent the Right of Way Branch in mediation. Once the mediation of a claim in condemnation has been calendared, the assigned staff attorney with the Attorney General's Office will contact the appropriate persons with the Right of Way Branch to discuss settlement terms. One of the requirements of the mediation process is that a governmental agency must be represented by someone with full authority to negotiate for the agency and to recommend a settlement to the appropriate decision making body. Hopefully, persons with the appropriate level of authority can be designated to attend the mediation, whether it may be the Branch Manager, the Assistant Branch Manager, the State Negotiator, Assistant State Negotiator, an Area Negotiator, or a Division Right of Way Agent. In those cases when the appropriate level of authority cannot be available, the person designated to attend the mediation will have been granted the appropriate authority to recommend a settlement for that case. If the proposed settlement lies within the prescribed authority limits for Right of Way Branch personnel, settlement of the case may be approved at the conclusion of the mediation session. In other cases, the recommended settlement may require the approval of the Right of Way Review Board or, for parcels involving settlement over one-million dollars (\$1,000,000), the recommended settlement requires approval by Right of Way Review Board and approval by the Secretary of Transportation. See Chapter 4 for additional information on the Review Board and settlement approvals. If the mediation results in a settlement, the mediated settlement agreement (contained within the Chapter 13 forms) shall be signed by all parties.

Whether the mediation is settled or not, the DOT representative attending the mediation shall complete a mediation report (contained in the Chapter 13 forms), provide it to the Trial Attorney and appropriate RW Unit personnel, and store it within the claim file.

13.14A PRE-TRIAL ASSISTANCE TO ATTORNEY

Upon being notified by the Trial Attorney in the Deputy Attorney General's office that a case has been calendared for trial, the Right of Way Agent, Division RW Agent, and Area Negotiator shall be available to provide any assistance to the attorney in preparing the case for trial. In working the project, the Agent will have become familiar with the project, the property owners, and the community, and may have background information that will be of great assistance in the trial of the case. The Agent should be prepared to go over the list of jurors for the term of court to determine if any of the jurors have had previous claims against the Department of Transportation or if they have expressed opinions that would indicate prejudice against the Department. The Agent, by reason of his knowledge of the community, may also know of business or personal relationships between the defendant and such witnesses as the defendants

might likely call upon to testify in their behalf.

13.15 PROCEDURE FOR SETTLEMENT OF CLAIMS AFTER INSTITUTION OF SUIT AND DEPOSIT OF ESTIMATED COMPENSATION

The following procedures will be followed for the settlement of claims after the institution of condemned claims both where (A) the property owner agrees to take the amount deposited in full compensation or (B) where it is agreed that an additional sum will be paid to the property owner.

A. Settlement by withdrawal of deposit as full compensation: Upon notification from the property owner that he desires to withdraw the deposit in full settlement, the Agent will first consult with the Trial Attorney, and with his/her approval, fill out [FRM13-H](#), "Application for Disbursement of Deposit as Full Compensation", by inserting the county in the caption and by copying the title of the suit from the Complaint and Declaration of Taking. The Agent will also fill in the amount of the deposit in the spaces provided in the second and fourth paragraphs. This should be checked against the copy of the Declaration of Taking to be sure that the amounts are the same. In the blank following the third paragraph, the word "none" usually will appear. The Agent should check the liens and encumbrances set forth in the complaint and ask the property owner if there are any other liens or encumbrances on the property. If the property owner states that there are, these should be listed in the blank space. If there are no others, the word "none" should be in the blank. In the blank space following paragraph 4, the Agent will usually insert, "To the defendants jointly". However, if the various defendants insist upon a division of the money in the judgment, the agent will fill in "_____dollars to (name) defendant and _____dollars to (name) defendant, etc.", with the total equaling the deposit. The Right of Way Agent will also fill in the date and secure the signatures of all defendants listed in the Complaint. He/she will also fill in the project and parcel number in the lower left-hand corner of the form. He/she should prepare an original and one copy (or more, if the defendants wish to keep a copy). The signatures of the defendants should be notarized.

When the application for disbursement, [FRM13-H](#), has been filled out and executed, the Agent will forward the original the Trial Attorney, together with a description of the right of way acquired and with an explanatory memo letter. This description should be shown on [FRM13-J](#) or on an unexecuted deed of easement or agreement previously prepared for negotiations with the right of way and other easements properly described thereon. All right of way, construction, drainage, and utility easement descriptions being drawn for

judgments should be described in narrative metes and bounds form. The metes and bounds may be taken from the cadd description provided to the Agent.

Upon receipt of the application for disbursement and the description of the right of way, the Trial Attorney will begin preparation of a consent judgment. The Attorney General's office will then prepare an Order of Disbursement and Final Judgment. The Trial Attorney may forward the documents to the Division Right of Way office with the request that the Agent secure the signatures of the defendants and the resident judge on the judgment and then file the judgment with the Clerk of Superior Court, with instructions to the Clerk that he/she send a first copy to the Register of Deeds for recording. The Attorney General's letter transmitting the judgment to the Division Right of Way Office will contain instructions on the procedure to follow in securing the entry of these judgments.

B-1. Settlement of cases for an amount in excess of that deposited (settlement reached by DOT personnel with consent of the Trial Attorney): In those cases where the claim is settled for an amount in excess of that deposited, [FRM13-i](#), "Agreement to Settle Right of Way Claim" shall be used. In the heading of the form, the county, project and parcel number is inserted. In the first paragraph, the name of all the defendants, the parcel number, and the county in which the action is pending is inserted. In paragraph 2, the project number will be inserted in the space provided. In paragraph 3, the county in which the action is pending and the amount deposited is inserted. In paragraph 4, the amount deposited is inserted in the first blank; in the second blank, the additional amount agreed upon over the deposit; and in the third blank, the total of these two sums; and in the fourth blank, the project number again. In the fifth paragraph, the amount in excess of the deposit and the county in which the action is pending is inserted. The agreement should be dated and signed by all defendants. The signatures of the defendants should be notarized. A Final Report similar to that called for in **Section 13.04** will be prepared. [FRM13-L](#) and [FRM13-M](#) will be used. In the final report, **the** amount shown should be the amount of the additional deposit. A revised [FRM10-F](#) justifying the settlement should be within the final report. The RW Agent will also send to the Trial Attorney a copy of the [FRM13-i](#), [FRM13-J](#) and advise that a final report has been sent to the Administrative Unit. The Final Report folder should contain all of the necessary documents, and the Administrative Unit should be notified to begin processing once the final report is correct and signed by the proper parties. The warrant will be sent to the Trial Attorney for preparation of a Consent Judgment. From this point, the claim will be closed in the same manner as set out in paragraph A above. A warrant in the amount of the additional deposit will have to be deposited with the Clerk of Court.

B-2. Settlement of cases for an amount in excess of that deposited (settlement reached by Trial Attorney): The Trial Attorney will obtain signatures on the consent judgment, prepare a justification for the settlement, and forward the file

to the Administrative Unit. The Administrative Unit will prepare the final report ([FRM13-L](#) and [FRM13-M](#)) and forward all documents to the Manager or Assistant Manager for signatures. Once approved, the payment will be requested by the Administrative Unit, and the file returned to the Trial Attorney.

It is critical if the claim involves a RHP (Relocation Housing Payment), that the effects of a settlement on the RHP be determined and the owner displacee advised. If the displacee has not claimed his/her RHP prior to the settlement, a stipulation agreement should be signed (See Chapter 14). If the RHP has been paid, it is possible that the settlement amount may be reduced or the owner/displacee may have to return a portion of the RHP. See Chapter 14 for more information.

13.16 ASSISTANCE AT TRIAL

The Right of Way Agent, Division R/W Agent and Area Negotiator should be available to attend the trial of a case upon the request of the Trial Attorney. These persons should be prepared to testify as to features of the project along the property, proposed construction features, existing rights of way or any phase of negotiations as may be relevant and asked for by the Trial Attorney. In addition, they should be available to assist when unexpected contingencies arise during the course of a trial which require obtaining additional pertinent information that could be crucial to the outcome of the trial. They may also be requested to give a deposition prior to trial.

13.17 PRE-TRIAL SETTLEMENTS AND JUSTIFICATION

In many instances after the filing of a condemnation, additional value evidence in the form of new appraisals, appraisals tendered by the property owner, changes in appraisal concept brought about by legal review, determination of damages by court-appointed commissioners, etc., or other factors brought about by the examination of witnesses, interest accrued, known recent court experience in the area, etc., may dictate the wisdom of reaching an administrative settlement for an amount over the deposit rather than carrying the case to a trial by jury. Procedures are set out in 23 CFR 712.401-406 and [49 CFR 24.103\(i\)](#).

The determination of settlements in excess of the deposit after condemnation has been filed is made by the State Negotiator, Assistant State Negotiator, the Manager of Right of Way or the Assistant Manager, or the Right of Way Review Board, depending upon the proposed amount of settlement and the threshold of authority of these individuals. The Review Board, will collectively review the more complex and unusual cases, and assess the risks of settling the claim without going to trial versus trying the case before a jury to determine just compensation

to which the property owner is entitled to receive. See **Section 3.13** for more information.

If a decision is reached by the Review Board for settlement above the deposit, the minutes of the Board shall constitute the documentation for the settlement. If the recommendation for settlement above the deposit originates in the Attorney General's Office, (for parcels not needing Review Board approval) justification for the settlement will be prepared by the Attorney General's Office and will be approved by the Manager of Right of Way or Assistant Manager.

13.18 REVISED APPROVED APPRAISAL AFTER CONDEMNATION

In a few instances after condemnation proceedings have been filed, the Review Appraiser may approve a new appraisal thereby voiding and superseding the prior approved appraisal. If requested by the Trial Attorney, the Right of Way Agent will promptly proceed to make the revised approved offer, by offer letter, to the owners. If the owners accept the new offer, a request for an additional deposit, along with properly executed [FRM13-L](#) and appropriate final report will be processed so a consent judgment finalizing the claim can be obtained. If the settlement based on the new offer is not possible, the Trial Attorney will file an amendment in the case and make an additional deposit to the condemnation suit.

If the attorney from the Attorney General's Office does not amend the suit to include an additional deposit, he must insure that any settlement made with the owner shall be an amount at least the same as the new approved appraisal which voided and superseded the previous appraisal approved for negotiations.

13.19 LITIGATION EXPENSES

In a condemnation suit, the Department will pay only those expenses associated with the trial of a claim, such as court costs and those witness fees as ordered by the judge. The property owner will not be reimbursed for other expenses, including attorney, appraisal, and engineering fees which the owner may actually incur because of a condemnation proceeding, except in the following instances:

- (a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or
- (b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

- (c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceedings.

Chapter 14 PROPERTY MANAGEMENT

14.01 PROPERTY MANAGEMENT – GENERAL

Property management may be defined as the accounting for rentals of improvements and land and the orderly disposal of surplus property, both improvements and land, acquired in connection with right of way. The primary objectives of property management are to insure that rights of way are cleared in sufficient time to avoid delaying construction of a project and that the state receives a maximum return on its investment in the property. Property management can be broken into three (3) general categories. Property Management responsibilities are shared by the Negotiating Unit and the Administrative Unit.

Advance Acquisitions

Right of way acquisition may consist of spot acquisitions for hardship cases, protective buying acquisitions or the advance acquisition of right of way for an entire project. In advance acquisitions, property may be held for some time before it is cleared for construction. As a result, the rental of property will become a major item in property management. Also, the matter of protection against vandalism may constitute a problem. All rental transactions on a local level will be handled by the Division Right of Way Agent, with all transactions being reported to the Real Property Agent in the Raleigh Office. The Real Property Agent will be responsible for seeing that adequate records and inventories are maintained, that property management work is done in conformance with proper procedures and that the right of way is cleared for construction in accordance with schedules.

Acquisition for Projects Scheduled for Immediate Construction

On projects in this category, properties will seldom be rented since there is usually insufficient time between the date of acquisition and possession and the time for clearance for construction to make it practical to rent the property. Property management also involves the inventory and clearance of the right of way. All transactions for the clearance of improvements from the right of way will be handled on a local level by the Negotiating Agent in charge of the project. These transactions will be reported to the Real Property Agent so that proper records and inventories can be maintained and checks be made to see that procedures are being followed.

Residue and Surplus Right of Way

Properties in this category usually involve the use or eventual disposal of Department owned property after completion of construction of a project. Here again, transactions on a local level are handled by the Division Right of Way Agent subject to the overall

supervision of the Real Property Agent. Proper records and inventories must be maintained until final disposal.

14.02 OCCUPANCY OF IMPROVEMENTS AFTER ACQUISITION

It will be the responsibility of the Division Right of Way Agent to handle the rental of owner-occupied properties which will be occupied for a period of time following acquisition. On the initial contact for tenant-occupied properties the Agent should secure information pertaining to the rental of the property such as agreed rental rate or collection of rent. On tenant-occupied properties, the Right of Way Agent will either make the necessary arrangements with a rental agent or handle the rental of property himself until it is vacated by the original tenant. In some instances, rental of the improvement may continue for a period of time after vacating by the original tenant. The rent set should be fair to a short-term occupant. On advance acquisitions, the occupants may remain on the premises at the discretion of the Division Right of Way Agent if a proper rental arrangement has been made with the Department. On projects where a scheduled delay is encountered or an extended acquisition period is anticipated, the occupants may remain in the improvement subject to an agreeable rental arrangement.

14.03 FREE OCCUPANCY RENTAL POLICY

Settlement with owners who occupy property and improvements acquired does not imply they have indefinite time for free occupancy. They should be allowed a reasonable time in which to vacate. The date listed in the vacate notice for an owner may be sufficient time for free occupancy before rent should be charged.

When settling with an owner, it should be understood and agreed that if he desires to occupy the property beyond the vacate date, that fair rent may be charged and will be collected by the state or a rental agent. If no arrangements are made as a condition of settlement the Right of Way Agent should establish fair rent to a short-term occupant and proceed with collection in the prescribed manner. If unusual circumstances arise and an owner-occupant desires a rent-free period of occupancy beyond the vacate date, a written waiver must be secured. The Right of Way Agent should contact the Division Right of Way Agent for this waiver. The termination date for the free rental period should be stated in the letter in addition to the reason and need for the request. This same procedure should be followed in condemnation where the owner occupies the property.

In the case of tenant-occupied property, the property owner should be notified by the Right of Way Agent that upon closing of the claim by the state that the future rental, in the same amount (unless the rent is not fair to a short-term occupant), will be collected by the State in the prescribed manner. The rental or Right of Way Agent should notify the tenants of the rental arrangements with the State and handle the rent from this point.

All rental agreements will be handled through the Branch's Real Property Agent in the Central Office.

14.04 PROTECTION OF IMPROVEMENTS PRIOR TO DISPOSAL

So that all property acquired by the Department in connection with right of way may be adequately protected between the time of purchase and disposal, the following steps should be followed:

1. The Right of Way Agent is to keep a close check on all buildings so as to know when the occupants vacate the property.
2. Immediately after a building is vacated, the Division Right of Way Agent should have the property inspected and advertised for sale. If, on this initial inspection, it is found that the property owner or occupant has removed any items that are a part of the realty or has willfully damaged or defaced the property, he should immediately contact the occupant to recover the property taken and he should immediately provide the Raleigh Office with a written report giving all particulars.
3. A check should be made to see that electric service has been discontinued, that the water has been cut off and that the water and heating systems have been drained to prevent damage by freezing in winter.
4. The Agent should see that all doors and windows are locked or otherwise adequately secured.
5. The Agent will usually place "No Trespassing" signs on each building, both front and rear. In certain situations, it will be in the Department's best interest not to post these signs on the buildings until time for them to be advertised for sale. Discretion must be used in deciding the project and the improvements on which signs should not be placed. Exceptions to the usual posting policy will be approved by the Division R/W Agent and so noted in each parcel diary.

14.05 PROTECTION OF RIGHT OF WAY PRIOR TO CONSTRUCTION

It is the policy of the Department to take such precautions as necessary to prevent the unauthorized use of and/or the encroachment on rights of way which may have been acquired for future highway projects which are not under construction. Acquired rights of way shall be maintained in a manner which will prevent or correct problems, such as illegal dumping or disposal of rubble, debris and garbage.

14.06 IMPROVEMENTS NOT TO BE MOVED

Occasionally, the Department may acquire buildings that are substandard and of such age and condition that they should not be sold for removal to nearby vacant property. There have been instances in the past where such buildings were sold by the Department and later repurchased, at added cost to the taxpayer, by urban renewal authorities. In those instances where a moving permit will not be granted by the municipality, the building should still be offered for sale in the usual manner; however, if no bids are received, the building should be included in the roadway contract as a demolition item, included in a separate demolition contract, or disposed of in the most economical way.

14.06A RODENT CONTROL PROCEDURES ON FEDERAL AID HIGHWAY PROJECTS

At or about the time the right of way inspection is made on all Federal Aid Highway Projects, an inspection will be conducted by the Right of Way Agent to determine if rodent control measures are necessary on the project.

A written report to the Real Property Agent on each project will set forth the results of the inspection and advise if control measures are needed. The report will include the date of the inspection, those making the inspection, parcel numbers and addresses, and/or the area by station numbers on those parcels or areas where control measures are necessary (See [FRM14-A](#)). If, in the opinion of the Project Property Manager, the service of the city or county health department is needed in making the inspections, he should secure their assistance. If control measures are necessary, the following procedures will be followed:

- A. Local licensed exterminators will be asked to submit bids on a project basis, using Proposal and Contract for Rodent Control, for rodent control treatment not later than the time of demolition or removal of the improvements located within the right of way (See [FRM14-B](#)). The object of rodent control is to exterminate the rodents within the right of way so that they will not migrate to adjoining properties. This can best be accomplished by baiting the parcels immediately after the parcel is vacated by the last occupants prior to demolition. The Department should be in possession of a property prior to its being treated.
- B. Proper notice will be made to the general public for the receipt of bids to cover the extermination of rodents by placing an advertisement in two consecutive issues of a daily or weekly newspaper and opening bids not sooner than ten days following the first advertisement. The Division Right of Way Agent's name should be referred to in the advertisement and the opening of bids should be supervised by him.

- C. A copy of the Department Proposal and Contract for Rodent Control will be submitted to the appropriate city or county health department requesting that they advise if there will be any conflict between the requirements of the Proposal and Contract for Rodent Control and any local laws. Any conflict should be resolved prior to advertising for bids.
- D. After treatment, the Right of Way Agent should contact the local Health Department to request an inspection of the parcels treated to insure that proper execution of the contract has been performed. Should additional parcels needing treatment need to be added to a previous let contract, this can be accomplished by the use of a letter. The State Board of Health has advised that anticoagulant poisons are the safest and recommends that they be used. The generally accepted mixture is one (1) part poison (warfarin) to nineteen (19) parts of bait (freshly ground corn meal). This mixture will be used on highway projects and will be dispensed by the use of bait boxes or their equivalent.

14.07 RENTAL OF PROPERTY

In general, any vacant property and/or buildings acquired by the Department may be leased or rented. Any buildings acquired by the Department that may be held for a period of one year or longer between the time of possession by the Department and the time it is necessary to dispose of them for right of way clearance may be rented if the buildings are in a sufficient state of repair. The rental or leasing of vacant property is not contingent upon the period of possession by the Department. The Department may employ a property management firm or real estate agency for collection of rentals or management of acquired property.

On a project where several rentals are anticipated, the Division R/W Agent will advertise for a Property Management Company or Real Estate firm to manage the properties using FRM14-CCC Request for Proposal: Property Management. The advertisement must run in a newspaper in the county of the rentals for two (2) consecutive printings. All bids received are then forwarded to the Real Property Agent for review and approval. Once a bid has been approved, the Division R/W Agent will have the awarded Property Manager execute [FRM14-C](#) North Carolina Department of Transportation Management Agreement. The Division Agent may assign additional parcels to a rental agent, setting forth the parcel number, former owner and street address. A copy of the letter will be sent to the Branch's Real Property Agent.

Rental Agreements (see [FRM14-D](#)) with individuals may be handled directly with existing occupants by the Right of Way Agent. Also, in areas with limited real estate activity, the Agent may handle rentals and leases.

14.08 MAINTENANCE OF BUILDINGS

Building repairs or maintenance shall be considered only when such repairs or maintenance can be justified by the length of the rental period, the amount of anticipated income, the estimated future sales price and the condition of the building. The Management Agreement prohibits any rental agency from making repairs without securing prior approval from the Department, since most improvements are rented on an as is basis. Exception may be made where rentals are expected to continue for an extended period. In such cases, any repairs requiring expenditure in excess of one month's rental should be submitted to Real Property Agent prior to approval by the Division Agent.

14.09 RECORD OF RENTALS

The Right of Way Agents are to maintain a complete record of all rentals in the Division Right of Way Office and the Real Property Agent is to do likewise in the Raleigh Office, (see [FRM14-F](#)). These records should be maintained on both a parcel and project basis so that the amount of rental collected for any given parcel or project can readily be determined. The standard Management Agreement provides that rental collections are to be reported by the rental agency to the Department as of the tenth day of the month unless agreed upon by the Property Manager. Immediately upon receipt from an individual or a rental agency, payments should be forwarded to the Real Property Agent in Raleigh, with an original and two copies of [FRM14-E](#), Collections for Sale-Rental of State-Owned Property. After entry in the record of the Real Property Agent, the check and collection sheets are forwarded to the Administrative Unit for auditing and accounting codes and distribution to the Fiscal Section and project file.

When a building is rented or rent collected for the first time after the Department purchases the property, the Right of Way Agent should submit the rental information and a picture. This will allow the Raleigh Office to be aware of the condition of the property and therefore aware of potential maintenance problems for future reference.

14.10 DISPOSITION OF IMPROVEMENTS

All improvements that are acquired in connection with the right of way are to be disposed of by one of the following methods:

1. Resold to the property owner for a retention value established by the Department.
2. Sold to displaced persons for the retention value to be used in providing replacement property for their own use or to a governmental agency for use by displaced persons.

3. Sold by public sale or by negotiated sale if no bids are received after proper advertisement.
4. Demolished by the roadway contractor or by demolition contract.
5. Retained by the Department for other public use.

14.11 PURCHASE OF MOBILE HOMES AS REALTY

In some instances, mobile homes have been appraised as realty and subsequently purchased by the Department of Transportation.

Since mobile homes are generally classed as personalty, it is necessary that they have a title and be registered with the Department of Transportation, Division of Motor Vehicles. It may be that in certain instances mobile homes purchased in Georgia, Tennessee or Virginia will not have been titled and registered in North Carolina. Also, the use tax required on the purchase of a mobile home must have been paid either at the point of purchase, if not in North Carolina, or when the unit is purchased in North Carolina. This tax is usually listed on the bill of sale.

To insure proper transfer of title and the identification of all secured lien holders, it is absolutely essential that the Appraisal Summary Sheet and the Preliminary Certificate of Title indicate that the area of taking includes the mobile home which has been determined to be realty. In determining if a mobile home should be considered personalty or realty, the Division Agent, and Area Appraiser are to collaborate in reaching a decision. This should be done at the time you review the project for signs and to determine which parcels can be done on Claim Reports by the Negotiating Section.

When a mobile home is advertised and sold by the Department after being purchased as realty, it is necessary that a title be secured for the purchaser. In order that this can be accomplished, the Agent should determine at the time negotiations begin on the purchase of the mobile home if the owner has a title, and, if not, request that same be secured. To insure the Department obtains clear title, it is necessary that a period of four (4) months pass from the time of registration of title in North Carolina. It is therefore, incumbent that title be registered in North Carolina as soon as possible so as not to stop the acquisition process. If a title is already possessed by the owner, the Agent should be certain that Section A of the title shows the purchaser as "Department of Transportation"; it is properly signed by the claimants and notarized at the closing of the transaction. The title should be forwarded to Raleigh with the closing papers for the claim.

The sale of a mobile home should be handled the same as other improvements to be sold. When a mobile home is purchase as part of the right of way acquisition, the title is to be sent to the Real Property Agent with a memo stating if and when and by what

contractor the mobile home will be abated and demolished or if it is to be sold by sealed bid so that the title can be transferred into the Department's name. If the current owner is to retain the mobile home, the title does not have to be sent to the Real Property Agent.

14.12 RESALE OF IMPROVEMENTS TO OWNER

Administrative Code 19A NCAC 02B.0138 states a specific order for the disposition of improvements:

- (1) Resold to the property owner for the retention value placed upon the improvement by the appraisal;
- (2) Sold by public sale or by negotiated sale if no bids are received after public advertisement;
- (3) Demolished by the roadway contractor or by demolition contract; or
- (4) Retained by the Department for other public use; or
- (5) Sold to a displacee for replacement housing.

When selling by public sale, the improvement must be advertised for two (2) consecutive days (Saturday and Sunday will suffice), and the bid opening must be no fewer than ten (10) days after the last day of advertising.

In order for all approvals and permits to be obtained, no fewer than 44 calendar days should be allowed for the moving of the improvement.

If an improvement is to be demolished, documentation of an attempt to sell by public advertisement, or documentation regarding less than 44 days remaining on the schedule or pictures documenting the unsellable condition of the house must accompany the inspection estimate ([frm14-m](#)).

As stated in chapter 9, the preferred method of disposing of improvements, particularly those where the owner has sufficient remaining land to relocate the improvement it, is to sell the improvements back to the owner for the retention value. The property owner may desire to retain only some of the improvements, such as an outbuilding. In this case, the Negotiator should not attempt to sell these separate items back to the property owner without first establishing a retention value for each item. If any item is sold to the property owner, he should be required to sign the standard Department Bid Form ([FRM14-G](#)), which has been prepared to fit the particular situation.

If the owner desires to retain their dwelling, the Agent should advise them as follows:

1. The claimant should be advised at the time of initial contact that if he is thinking of retaining any improvements, he should be aware they will have to be inspected for asbestos at his own expense. If necessary, the Agent can provide the owner with a list of inspection firms. The Agent should state that this

inspection is required by the Department of Health and Human Services prior to any building being moved or demolished from a highway project.

2. At the time of the offer the claimant should be advised that if the building has not been inspected, he should do so, in order to be aware of any problems he may have regarding asbestos, should he decide to retain the improvement.
3. At closing, the owner will be required to pay the retention value, the performance deposit and sign the "Bid Form" with the asbestos clause included. The Agent should be sure the owner understands he will be responsible for compliance with all asbestos regulations when moving the improvement.
4. The Bid Form, copy of the inspection report, [FRM14-E](#) (credit sheet), [FRM14-I](#) (performance deposit form) and cashier's or certified checks should be submitted to this office for acceptance.
5. If, after the owner has had the improvement inspected, he decides he does not want to retain the improvement, then the Department may reimburse him for the cost of the inspection based on the owner providing the Right of Way Agent with a copy of the inspection report and a paid receipt.
6. To request reimbursement for the inspection, the Agent should prepare a final report and submit it to the Raleigh Office, along with a copy of the inspection report and the paid receipt, and state in the justification section that they are requesting payment to reimburse for the inspection report.

The property owner shall be required to put up a performance deposit to guarantee removal and clean-up. The amount of this deposit should be determined by the Right of Way Agent from Table 1, Suggested Performance Deposits shown on [FRM14-CC](#) and should be an amount sufficient to cover the expenses in the event it is necessary for the Department to clean up the area if the property owner has not done so.

The Bid Form should be prepared and the property owner requested to sign it and furnish an appropriate certified or cashier's check at the time the payment for the right of way is made. Should they decline to sign the Bid Form at this time, it should be submitted, unsigned, along with the Final Report with the statement that the Bid Form is to be returned for execution and collection of the performance deposit when the check for closing the claim is delivered. If the performance deposit is received at the time the Right of Way Agreement is executed, the Bid Form together with [FRM14-I](#), should be submitted to Raleigh under separate cover from the Final Report with an appropriate statement in the Final Report to this effect. It is not necessary to mention in the Right of Way Agreement the cut-off of the building by the property owner since this can be handled in the Bid Form. Should the cut-off of a building be necessary and agreeable by the property owner, the amount paid for the cut-off should be required as a performance deposit. All performance deposits should be in the form of certified or cashier's checks. Of course, if no performance deposit was secured when the agreement was signed and

the right of way has been satisfactorily cleared by the time the check is delivered, the performance deposit may be waived.

14.13 PROMPT REPORTING OF ALL RECEIPTS COLLECTED

G.S. 147-77 requires daily deposit of funds to the credit of the Treasurer of North Carolina. This statute provides, in part, that all revenue and other receipts collected by a North Carolina State Agency shall be deposited immediately following the date of collection. In order to comply with the provision of this statute, it is imperative that the Division Right of Way Agent promptly forwards to the Real Property Agent all receipts collected. The receipts in this category are: (1) all money collected for the sale of buildings or other improvements, including partial payments; (2) all money collected for the sale of real property, including partial payments; (3) all money collected on the rental property; (4) all performance deposits collected in connection with the sale of buildings, or other improvements.

Proceeds collected for Items 1, 2 and 3 above are to be transmitted to the Real Property Agent with standard letter of transmittal entitled "Collections for Sale-Rental of State-Owned Property" ([FRM14-E](#)). Also, all performance deposits collected in connection with the sale of buildings or other improvements will be transmitted to the Real Property Agent with an original and two copies of [FRM14-I](#), submission of Performance Deposit.

When submitting forms for the approval of the sale of improvements to the Real Property Agent, a copy of the advertisement is to be attached to each individual item submitted. If the advertisement is not letter-size, it is to be taped to a sheet of letter-sized paper so it will not be lost in the transmittal. All advertisements are to contain asbestos information availability and a statement to the effect that the Department reserves the right to reject any or all bids.

14.14 PUBLIC SALE OF IMPROVEMENTS

As improvements become vacant, the Agent should arrange to have them inspected for asbestos. The Agent should proceed with offering these improvements for public sale **by sealed bid or auction**, and, if no bids are received, with letting a demolition contract. It is the Department's intent to have no asbestos-containing improvements in the roadway contract in the 200 series items. If for some reason this abatement/demolition cannot be performed on a parcel prior to the "letting date", the Raleigh Office should be notified so a delay of entry can be included in the roadway contract if necessary.

Improvements acquired by the Department must be disposed of by public sale. The preferred method of sale is by means of sealed bids, after proper advertisement. In unusual situations, it may be desirable to sell improvements by means of auction sale, but only after prior approval of the Real Property Agent. Sales of property must be advertised in a newspaper of general circulation in the county in which the property is

located. The advertisement should appear in two consecutive issues of a daily or weekly paper. The date for opening bids should not be earlier than ten days after publication of the first advertisement. A typical advertisement for the sale of buildings follows and please note that the Division Right of Way Agent's name should be referred to in the advertisement.

NOTICE

The following buildings located on Project 8.1475203 (Raleigh Beltline) in Wake County are offered for sale to the highest bidder:

Parcel 2 - One story frame dwelling located at 3208 Avent Ferry Road. Parcel 10 - One story brick dwelling located at 409 Cherry Street. A mandatory pre-bid meeting will be held on site located 2308 Avent Ferry Rd. at 10:00 am on May 16, 1981. No bids will be accepted by anyone not attending. A copy of the asbestos report for each building is available upon request. Only sealed bids on Bid Forms furnished by the Department of Transportation and placed in a sealed envelope with the words "Sealed Bid" and the bid opening date written on the front of the envelope will be considered. Bids will be opened on Friday, May 30, 1981, at 10:00 A.M. in the office of the Division Right of Way Agent of the Department of Transportation located at 815 Stadium Drive, Durham, NC. Sealed bids shall be delivered to the above address or mailed to C. D. Parker, Division Right of Way Agent, Department of Transportation, P. O. Box 15580, Durham, NC 27704. Sealed bids must be received in the office of the Division Right of Way Agent located at 815 Stadium Drive in Durham, NC prior to 10:00 A.M., Friday, May 30, 1981, or they will not be considered. The Department of Transportation reserves the right to reject any and all bids. In accordance with Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, minority business enterprises will be afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color or national origin. For full particulars, contact the above-mentioned office at the given address or telephone (919) 683-6847.

When disposing of improvements on parcels where multiple improvements are located on a property, it is essential that the description of improvement on the Bid Form be specific in identifying each improvement by location, such as a house number. The specific identification of improvements on a multiple-improved property should eliminate any misunderstanding or confusion when different individuals purchase these improvements and will help prevent the possibility of these individuals removing the wrong improvement.

The above advertisement, including the civil rights reference, should be used on all projects.

Invoices for the publication of advertisement, together with proof of publication (i.e. affidavit of publication and/or tear sheet), shall be secured from the newspaper by the Division Right of Way Agent and forwarded to the Raleigh Office for payment. In

addition to a newspaper advertisement, the Right of Way Agent should place appropriate "FOR SALE" signs on the premises. A copy of the advertising notice should be sent to house moving or demolition contractors in the area. Also, a copy of the notice should be sent to any person who may have indicated a desire to purchase improvements for sale.

On the issuance of any bids to a prospective purchaser, an envelope addressed to the Division Agent with the word "BID" stamped on the left side of the envelope should be supplied with the Bid Form ([FRM14-H](#)). Also, the date for the opening of bids should appear on the envelope.

The Bid Form to be used for the sale of buildings by public sale ([FRM14-H](#)) should include the civil rights compliance reference. The bidder will be required to submit with his bid a personal check. If the bid is \$500.00 or less, a check in the full amount of the bid should be submitted with the Bid Form. If the bid is in excess of \$500.00, the bid deposit shall be \$500.00. The performance deposit will be predetermined by the Right of Way Agent from Table 1 ([FRM14-CC](#)) and inserted in the Bid Form before delivery to the prospective bidder. Should the amounts not be adequate to cover the removal of the improvement, a higher performance deposit should be required.

At the expiration of the time allowed for receiving bids, the bids shall be opened publicly, tabulated and recorded. The Division Right of Way Agent and at least one other Departmental employee should be present at all bid openings. The Division Right of Way Agent should open, state and hand the bid to the second employee for tabulation. Proposals and deposits shall be carefully checked and the amount of the bid announced for the benefit of those present. Any person present desiring to inspect the bids should be allowed to do so under the supervision of the Department employees present. No changes can be allowed to any bid after it has been opened. It should be made clear to those present that no bid will be considered as binding upon the Department until it has been accepted by the Manager of Right of Way, the Assistant Manager of Right of Way or the Assistant Manager of Right of Way. After all bids have been checked and tabulated, the deposits of unsuccessful bidders shall be returned personally to those present and by mail to those not present. The high bid, along with the personal check, a copy of the advertisement, and Sales Data Sheet, all bids received and a transmittal letter/tabulation of all bids ([FRM14-J](#)) should be sent to the Real Property Agent for final acceptance or rejection. A copy of the transmittal letter and approved bid will be returned to the Agent indicating the action taken. The Agent should promptly notify the successful bidder and forward him a copy of the Bid Form, return the personal check and collect separate certified or cashier's checks for the full bid price and the performance bond (see [FRM14-CC](#)). Bidders should be allowed a minimum of 30 days for removal of the improvements. Where possible, however, and circumstances permit, 60 to 90 days may be allowed.

If no bids are received, the Right of Way Agent is to document the individual claim file to this effect. A copy of the advertisement attached to the standard transmittal letter, [FRM14-J](#) (original only), should be forwarded to the Real Property Agent. A notation

should be made in the bottom right hand corner under "List of Bidders" to the effect that "No Bids Were Received".

If no bids are received for the sale of improvements after proper advertisement, it will be permissible to negotiate the removal of an improvement with individuals interested in purchasing them. In so doing, this eliminates the cost to the Department to have the buildings demolished or removed by contract. In submitting such a sale for approval, a statement should be entered under the name of the bidder in the bottom right hand corner of the cover letter to the effect that, "When this building was advertised for sale, no bids were received. It is estimated that it would cost \$200.00 to have this building demolished and I recommend that this bid be approved." The same procedure with appropriate forms, checks, etc., should be submitted for a negotiated bid to be approved as for a public sale.

14.15 PUBLIC SALE OF IMPROVEMENTS WITH LAND RESIDUE

In some instances, it may be advantageous to the Department to sell a building together with a residue of land, particularly in situations where the Department owns a residue of sufficient size and consistent with local zoning requirements to accommodate the building and where there may otherwise be a scarcity of vacant land in the area. In such situations, the sale of the property will be advertised and conducted in the same manner as indicated above. The sale of the land, however, must be confirmed and approved by the Department, the Council of State and the Governor. These sales may take place prior to construction; therefore, the Agent should inform prospective bidders that the land sold must be subject to slope or drainage easement outside the right of way, if, in fact, such easements will be required. It may be necessary to include a provision in the deed that the buyer acknowledges the effects of the project and releases the Department from all claims for damage by reason of such project and construction within the easements.

14.16 DISPOSITION OF EQUIPMENT OR TRADE FIXTURES

The Department sometimes acquires property with the right of way that may be considered Trade Fixtures or Equipment. For example, in the purchase of a motel the Department may acquire such items as beds, chairs, tables, linens or other furnishings normally sold with the motel. In the case of a manufacturing plant, it may acquire certain items of machinery or other fixtures that are not a part of the real estate. If the owner of the property does not retain and remove the trade fixtures or equipment after completion of the acquisition, and if these items have no value or are a detriment to the sale of the building where they are located, efforts to dispose of these items by public sale should be considered before a demolition contract is advertised and let for the building in which these items are contained.

14.17 DISPOSITION OF IMPROVEMENTS BY DEMOLITION

As a rule, all demolition items will be cleared prior to let by open-end contract or by bid contract. No building having an estimated retention value in excess of \$200.00 should be placed in Section 210 even though no bids were received when advertised for sale, since demand for the building may develop prior to the time that the contractor begins work on the project. Such items should be placed in Section 215 so they may be deleted if a reasonable offer to purchase is received at a later date. The 2002 revision of the Standard Specifications for Roads and Structures has deleted the previous Section 220 Relocation of Existing Buildings so, in the future, no existing buildings will be relocated under a roadway contract. The following three sections apply to the disposition of improvements to be handled in roadway contracts:

Section 200 - Clearing and Grubbing

Included in this section under Subsection 200-5 that states that all timber cut during clearing operations is to become the property of the Contractor. Any deviations to this procedure must be handled by a special provision in the roadway contract. There are only rare instances where this provision would be used and it would be the responsibility of the Agent handling the project to submit such provisions at the same time other demolition items are submitted for inclusion in the roadway contract. With regard to special provisions for the disposition of timber on secondary road projects, it will be the responsibility of the Agent to advise the District Engineer of such provisions.

Section 210 - Demolition of Buildings and Appurtenances

This section consists of the demolition, removal and disposal of all buildings and appurtenances included in the contract and their method of payment would be made on a lump sum basis for each item. Miscellaneous buildings or other improvements will be included under this section. NOTE: Do not include an item in Demolition of Buildings and Appurtenances under Section 210 when you anticipate that the item might be deleted from the contract. A sample guide for submitting the list of items to the Central Office follows:

STATE PROJECT:

COUNTY:

DESCRIPTION:

DEMOLITION OF BUILDINGS AND APPURTENANCES

The contractor shall demolish the buildings and appurtenances which are listed below in accordance with Section 210 of the Standard Specifications.

Demolition of Buildings and Appurtenances (Item No. 1)

Parcel 5 - Rt. Of Survey Station 2 + 00, Line L
One-Story Frame Shed

Demolition of Buildings and Appurtenances (Item No. 2)
Parcel 8 - Lt. Of Survey Station 12 + 00, Line L
Concrete Block Garage

Demolition of Buildings and Appurtenances (Item No. 3)
Parcel 12 - Lt. Of Survey Station 5 + 00, Line Y-4
Concrete Block Silo
Total Lump Sum Estimate \$800.00

In addition to the above items, the Proposal and Contract Section has requested that a separate list be prepared for each of these items which estimates the cost of removal for each item. This should be prepared as follows:

STATE PROJECT:
COUNTY:
DESCRIPTION:

SECTION 210 - DEMOLITION OF BUILDINGS AND APPURTENANCES

Demolition of Buildings and Appurtenances (Item No. 1)	
Lump Sum	\$200.00
Demolition of Buildings and Appurtenances (Item No. 2)	
Lump Sum	300.00
Demolition of Buildings and Appurtenances (Item No. 3)	
Lump Sum	<u>300.00</u>
Total Lump Sum Estimate	\$800.00

Section 215 - Removal of Existing Buildings

This section reserves to the Department the right to delete any and all items from the contract which are under this section. This section is mainly concerned with the removal of existing buildings and a sample copy follows to use as a guide in submitting the list to this office.

STATE PROJECT:
COUNTY:
DESCRIPTION:

BUILDING REMOVAL

The Contractor shall remove the buildings and appurtenances which are listed below in accordance with Section 215 of the Standard Specifications and the following Provisions:

Building Removal (Item No.1)
Parcel 1 - Lt. Of Survey Station 2 + 00, Line L
One-Story Frame Dwelling

Building Removal (Item No. 2)
Parcel 1 - Rt. Of Survey Station 2 + 25, Line L
One-Story Frame Dwelling - Partially outside right of way and/or construction line

Building Removal (Item No. 3)
Parcel 25 - Rt. Of Survey Station 20 + 15, Line L
One-Story Frame Dwelling - Partially outside right of way and/or construction

Building Removal (Item No.4)
Parcel 25 - Rt. Of Survey Station 22 + 75, Line L
One-Story Concrete Block Business Building

When the description of the work for an item requires a portion of the building to be cut off, that portion of the buildings and appurtenances located within the right of way and/or construction area shall be cut off by the Contractor and disposed of by him. The Engineer will denote on the building the line where the building is to be cut off. The Contractor will be required to cut the building off on a neat line along the construction line or right of way boundary designated by the Engineer. The Contractor will not be required to do any repairing to that portion of the building located outside the right of way or construction area or to shore it up in any respect. All of the Contractor's work shall be confined to the right of way and construction area designated by the Engineer. (This paragraph pertains to Item No. 3.) (This paragraph is to be used only in cases where a building must be cut off.)

When the description of the work for an item indicates a building partially inside and partially outside the right of way and/or construction area, but does not require the building to be cut off, the entire building shall be removed. (This paragraph pertains to Item No. 2.) (This paragraph is to be used only where buildings are partially inside or outside right of way and/or construction area but not to be cut off.)

In addition to the above items, the Proposal and Contract Section has requested that a separate list be prepared for each of these items which estimates the cost of removal for each item. This should be prepared as indicated below:

STATE PROJECT:
COUNTY:
DESCRIPTION:

SECTION 215 - REMOVAL OF EXISTING BUILDINGS

Upon receipt of copies of the lists referred to above, the State Negotiator will have them checked, and, if found in order, the originals will be forwarded to the Roadway Design Department for inclusion in the proposal and contract for the project.

Building Removal (Item No. 1) Lump Sum - - - - -	\$500.00
Building Removal (Item No. 2) Lump Sum - - - - -	800.00
Building Removal (Item No. 3) Lump Sum - - - - -	700.00
Building Removal (Item No. 4) Lump Sum - - - - -	75.00
Total Lump Sum Estimate - - - - -	\$2,075.00

14.18 DISPOSITION OF IMPROVEMENTS BY MOVING CONTRACT

The Department will not enter into any contracts with property owners whereby the Department will assume the contractual responsibility to move dwellings or buildings from the right of way, except where a contractual obligation exists under a previous written agreement with the property owner or where a property owner on a secondary road improvement project has donated the right of way and it has been agreed the buildings within the right of way will be moved by the Department. Where a contractual obligation exists under a former agreement to move a dwelling, it is the policy of the Department to purchase the dwelling from the property owner rather than move it under the roadway contract. In this event, the Agent will have the dwelling appraised and proceed to acquire the dwelling and relocate the owner/tenant, who would be eligible for relocation benefits, from the right of way.

For a building or structure not involving a displacee, the Agent will advertise for house movers for the cost of moving the building or structure on a 'turn-key' basis. If the cost of moving the building or structure and setting it back up is less than the value of the building, the owner may be paid the lower of the 'turn-key' moving estimates; however, if the cost of moving exceeds the value of the building, the owner may be paid only the appraised value of the building. In this situation, if the owner insists that the building be moved because of the contractual obligation, the Department will pay the owner who will then assume responsibility for moving the building from the right of way to a new site even if the cost of doing so exceeds the value of the building.

Upon agreement and payment of the moving cost, the Agent will secure a release from the property owner who then assumes all responsibility for the relocation of the building or structure from the right of way.

14.19 CONTRACTS FOR DEMOLITION AND/OR ASBESTOS ABATEMENT

In preparing a project for letting and in clearing it of improvements which were not sold prior to letting the project to contract, the Department will abatement all asbestos containing material from unsalable buildings prior to removing or demolishing them either by local contract or using one of the Branch's 'open-ended' contractors. Any buildings or improvements that are placed in the Roadway Contract under Section 210 or Section 215 for disposition by the roadway contractor shall be asbestos free according to an understanding between the Right of Way Branch, the Construction Unit and roadway contractors.

Contracts for asbestos inspections and asbestos abatement and/or demolition of improvements can be obtained from the Branch's 'open-ended' contractors. On an annual basis, Agreements for Asbestos Inspections, Abatement and Structure Clearings will be approved by the Board of Transportation to allow qualified contractors to perform asbestos inspection, asbestos abatements and/or demolition services on an 'on-call' or 'as needed' basis throughout the State. Unit prices for asbestos inspections, for asbestos abatement and for demolitions will be approved for each contractor and forwarded to each Division Office to be used in contracting directly with them for any of their services. These contracts will be administered through the Branch's Real Property Agent in the Central Office who will be responsible for the approval of each contract, securing performance bonds and making payments upon completion of work. In accordance with the policy of the Asbestos Hazardous Management Branch of the NC Division of Epidemiology, different contractors will be chosen to perform asbestos inspections and to perform asbestos abatements and demolitions. These 'open-ended' contracts can be used on projects where sufficient time is not available to advertise and bid a contract between possession of improvements and the project lettings, emergency situations, advanced acquisition disposals, and where required services may not justify the cost of advertisement and bidding.

As previously mentioned, Open-ended Contractors will be used to perform all asbestos inspections. Work Assignment Cost Estimate - Inspections ([FRM14-M](#)) will be sent to a contractor whose offices are located near a project and who can perform the inspections within a reasonable time. Upon receipt of the completed worksheet, the prices for inspections will be reviewed to determine if they are in line with the approved unit prices. If the prices are acceptable, the worksheet will be submitted to the Real Property Agent in Raleigh for approval with 3 copies being returned for the Contractor, the Division Engineer and the Division Office file. Work shall not commence until the Contractor has been notified of the approval of work. Upon verification of completion of

the work, the Contractor's invoice, along with copies of the inspection reports for each improvement, shall be submitted to the Real Property Agent for payment.

If time does not permit for the advertisement of asbestos abatements ([FRM14-N](#)), an Open-ended Contractor will be requested to submit a Work Assignment Cost Estimate - Abatement to perform the abatement of those improvements containing asbestos materials revealed by the inspections. The processing of the abatement worksheets for approval will be the same as for inspection worksheets as discussed above, except, that prior to approval of the contract, the Contractor must obtain a Performance Bond and a Payment Bond in the full face amount of the abatement contract less landfill and permit cost. The Real Property Agent will provide guidance and forms to the contractors in obtaining the Performance Bond and Payment Bond through a surety bond, or a cash bond. After contract approval, the Contractor is required to obtain permits, which have a ten-day waiting period before work can commence, from the Asbestos Hazardous Management Branch. Arrangements should be made with the Division Engineer's Office for an inspector to be present during abatement activities on the project. Once the work has been completed, the Real Property Agent will process an invoice for payment and the release of the bonds.

Again if time does not permit for the advertisement of the demolition of improvements ([FRM14-O](#)), an Open-ended Contractor will be requested to submit a Work Assignment Cost Estimate -Clearings to perform the demolition of the improvements which are asbestos free. The Contractor must submit the worksheet for clearings and obtain the proper bonds prior to the approval of the contract. After obtaining contract approval and permits for demolition from the Asbestos Hazardous Management Branch and submitting copies to the Department, the Contractor may commence work. Arrangements should be made with the Division Engineer's Office for an inspector to be present during demolition activities on the project. Upon completion of work, payment and release of bonds will be processed upon receipt of an invoice and landfill receipts from the Contractor. The Right of Way agent should submit the invoice, all landfill tickets, copies of permits and contractor evaluation ([FRM14-OO](#) new form) to the Real Property Agent for review, approval and payment.

When sufficient time permits in the right of way schedule, local contracts for the abatement of asbestos and/or demolition of structures and improvements are preferred. Local contracts will be advertised and bid in accordance with bidding procedures outlined for the Public Sale of Improvement section of this Chapter in the Manual, except that the lowest acceptable bid will generally be approved. Four (4) Proposals and Contracts for Demolitions, one for single projects with asbestos ([FRM14-K](#)), one for multiple projects with asbestos ([FRM14-L](#)), will be used for the removal or demolition of improvements, plus asbestos abatement when required, of the above-mentioned improvements or existing buildings prior to project let. The successful Contractor will provide performance and payment bonds prior to contract approval and permits from the Asbestos Hazardous Management Branch prior to the commencement of work. Arrangements should be made with the Division Engineer's

Office for an inspector to be present during the abatement and demolition activities on the project. Upon completion of work, payment and release of bonds will be processed upon receipt of an invoice and landfill receipts from the Contractor.

For contracts with a value over \$30,000 project, the successful contractor must have a General Contractor's license in order to perform the work.

14.20 EXCHANGE OF IMPROVEMENTS FOR RIGHT OF WAY

In some instances, an adjoining property owner who has remaining land may wish to purchase improvements acquired by the Department from other owners in exchange for right of way taken. This type of transaction is generally discouraged; however, if it will aid in reaching a settlement, the Agent may enter into such agreements providing that the original owner of the improvement has refused to purchase the buildings for their retention value. If the original owner does not desire to repurchase the improvement, it may be exchanged on the basis of a retention value established by the Department. If the retention value of the improvements is greater than the appraised damage to the subject property, the property owner should pay the Department the difference. In implementing this type of transaction, the standard department Bid Form should be used and the purchaser of the building should be required to furnish a performance deposit to insure cleanup of the premises after moving the building.

14.21 HANDLING OF PERFORMANCE DEPOSITS

The General Statutes provide that all funds received by the State be deposited on the next day after receipt. The State Auditor has ruled that performance deposit checks made payable to the Department of Transportation are included in this category. The Agent should immediately transmit to the Raleigh Office all certified or cashier's checks received as performance deposits using [FRM14-I](#). Upon satisfactory completion of the work, the amount of these checks will be refunded by the Department to the person or firm making the deposit (see [FRM14-I](#)). The performance deposit submitted by the successful bidder is to be forwarded immediately to the Real Property Agent with [FRM14-I](#). The Agent is cautioned to show in the space for "name of depositor" the name of the person who purchased the improvement rather than the name of the bank or the person on whose account the check is drawn, unless the two are the same. The Agent is also to enter the address of the depositor. In those instances where, in the sale of improvements, the Agent receives a combined bid covering one or more parcels, it is suggested that the name following "Claim of" be the first name shown in the column under "Improvements purchased by the Department of Transportation from", and immediately following the first name, "See back of form for additional claimants names". In filling out the last block, "Improvements purchased by the Department of Transportation from", if there are more items than the block will accommodate, this information should be continued on the reverse side of the form. The check covering the deposit should be attached to the form. After all the improvements have been

satisfactorily removed and the premises cleared to the satisfaction of the Division Right of Way Agent, he should promptly submit [FRM14-I](#), Return of Performance Deposit, to the Branch's Real Property Agent.

14.22 REMOVAL OF GRAVES OR CEMETERIES

On any properties where a cemetery or graves must be removed from the right of way, the preferred procedure to follow is by consent of the next of kin. The Agent must consider that the removal of graves may involve a delicate situation in which sentimental considerations are often present. In discussing such matters with the next of kin, he should be respectful and considerate. Since all work pertaining to the removal of graves shall be under the supervision and direction of the County Board of Commissioners or other appropriate officials, including the local Health Director, the Agent should ascertain the proper party to contact in each county in which graves will be disinterred and/or reinterred. A letter from the Division Right of Way Agent to the Board of County Commissioners for both the disinterment and/or re-interment sites shall be written indicating that the Department is certifying the necessity for moving the graves and/or cemetery from the right of way of the proposed project. A copy of this prescribed letter will be sent to the appropriate Health Department.

In many instances, the remains may be removed to a burial plot in the same cemetery and this practice should be encouraged wherever possible. If requested by the next of kin, however, the remains may be removed to another cemetery or location in the community. Notification to Remove Grave and Marker (see [FRM14-T](#)), should be executed by the next of kin of the deceased. A copy of this form shall be given to the next of kin after being completed, dated and signed by the Agent. This fulfills the thirty (30) day written notice requirement of the Statute. In the event the remains are being removed and relocated in a cemetery that will not permit above ground markers or headstones, a provision should be placed in the form regarding the disposition of the markers that are located in the cemetery. In such cases, a suitable replacement marker shall be provided by the Department. The existing markers are usually buried with the remains at the new grave site. The Agent must arrange for and secure the substitute burial plot, with the Department paying all expenses of disinterment, removal and reinterment, including the actual reasonable expense of one of the next of kin incurred in attending the disinterment. The expenses of the next of kin may not exceed the sum of two hundred dollars (\$200.00). Deeds to substitute burial plots should be drawn in favor of the next of kin. If no next of kin can be located, the plot should be deeded to the county, if agreeable, and to the Department as the last resort.

Regardless of whether the next of kin can be located or the next of kin will not grant permission for the removal of the remains, it will be necessary for the Department to resort to the procedure in GS 65-106, which provides in part as follows:

§ 65-106. Removal of graves; who may disinter, move, and reinter; notice; certificate filed; re-interment expenses; due care required.

(a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any church, electric power or lighting company, or any person, firm, or corporation may affect the disinterment, removal, and re-interment of graves as follows:

- (1) By the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, when it shall determine and certify to the board of county commissioners in the county from which the bodies are to be disinterred that such removal is reasonably necessary to perform its governmental functions and the duties delegated to it by law.
- (2) By any church authority in order to erect a new church, parish house, parsonage, or any other facility owned and operated exclusively by such church; in order to expand or enlarge an existing church facility; or better to care for and maintain graves not located in a regular cemetery for which such church has assumed responsibility of care and custody.
- (3) By an electric power or lighting company when it owns land on which graves are located, and the land is to be used as a reservoir.
- (4) By any person, firm, or corporation who owns land on which an abandoned cemetery is located after first securing the consent of the governing body of the municipality or county in which the abandoned cemetery is located.

(b) The party effecting the disinterment, removal, and re-interment of a grave containing a decedent's remains under the provisions of this Part shall, before disinterment, give 30 days' written notice of such intention to the next of kin of the decedent, if known or subject to being ascertained by reasonable search and inquiry, and shall cause notice of such disinterment, removal, and re-interment to be published at least once per week for four successive weeks in a newspaper of general circulation in the county where such grave is located, and the first publication shall be not less than 30 days before disinterment. Any remains disinterred and removed hereunder shall be reinterred in a suitable cemetery.

(c) The party removing or causing the removal of all such graves shall, within 30 days after completion of the removal and re-interment, file with the register of deeds of the county from which the graves were removed and with the register of deeds of the county in which re-interment is made, a written certificate of the removal facts. Such certificate shall contain the full name, if known or reasonably ascertainable, of each decedent whose grave is moved, a precise description of the site from which such grave was removed, a precise description of the site and specific location where the decedent's remains have been reinterred, the full and correct name of the party effecting the removal, and a brief description of the statutory basis or bases upon

which such removal or re-interment was effected. If the full name of any decedent cannot reasonably be ascertained, the removing party shall set forth all additional reasonably ascertainable facts about the decedent including birth date, death date, and family name.

The fee for recording instruments in general, as provided in [G.S. 161-10\(a\)\(1\)](#), for registering a certificate of removal facts shall be paid to the register of deeds of each county in which such certificate is filed for registration.

- (d) All expenses of disinterment, removal, and acquisition of the new burial site and re-interment shall be borne by the party effecting such disinterment, removal, and re-interment, including the actual reasonable expense of one of the next of kin incurred in attending the same, not to exceed the sum of two hundred dollars (\$200.00).
- (e) The Office of Vital Records of North Carolina shall promulgate regulations affecting the registration and indexing of the written certificate of the removal facts, including the form of that certificate.
- (f) The party effecting the disinterment, removal, and re-interment of a decedent's remains under the provisions of this Part shall ensure that the site in which re-interment is accomplished shall be of such suitable dimensions to accommodate the remains of that decedent only and that such site shall be reasonably accessible to all relatives of that decedent, provided that the remains may be reinterred in a common grave where written consent is obtained from the next of kin. If under the authority of this Part, disinterment, removal, and re-interment are effected by the State of North Carolina or any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any electric power or lighting company, then such disinterment, removal, and re-interment shall be performed by a funeral director duly licensed as a "funeral director" or a "funeral service licensee" under the provisions of [Article 13A of Chapter 90](#) of the General Statutes.
- (g) All disinterment, removal, and re-interment under the provisions of this Part shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county where the disinterment, removal, and re-interment take place. If re-interment is effected in a county different from the county of disinterment with the consent of the next of kin of the deceased whose remains are disinterred, then the disinterment and removal shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of the disinterment, and the re-interment shall be made under the supervision and direction of the county board of commissioners or other appropriate official, including the local health director, appointed by such board for the county of re-interment.

Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reintering such remains. Due care

shall also be taken to remove, protect, and replace all tombstones or other markers, so as to leave such tombstones or other markers in as good condition as that prior to disinterment. Provided that in cases where the remains are to be moved to a perpetual care cemetery or other cemetery where upright tombstones are not permitted, a suitable replacement marker shall be provided.

- (h) Nothing contained in this Part shall be construed to grant or confer the power or authority of eminent domain, or to impair the right of the next of kin of a decedent to remove or cause the removal, at his or their expense, of the remains or grave of such decedent. (1919, c. 245; C.S., ss. 5030, 5030(a); Ex. Sess. 1920, c. 46; 1927, c. 23, s. 1; c. 175, s. 1; 1937, c. 3; 1947, cc. 168, 576; 1961, c. 457; 1963, c. 915, s. 1; 1965, c. 71; 1971, c. 797, s. 1; 1977, c. 311, s. 1; 2001-390, s. 3; 2007-118, s. 1.)

The Agent should note that before the method outlined in the statutes may be used, the property from which the graves are to be removed must be owned by or be in the custody or control of the Department. If an agreement has not been reached with the property owner on whose property the graves are located, an action in condemnation must be filed prior to commencing the procedure for the removal of graves. So there will be no questions as to ownership of the cemetery area, the Agent should secure a Preliminary Certificate of Title for the property on which the cemetery is situated. This should be done even though the approved appraisal for the property is less than \$25,000.00. The Real Property Agent should be notified by the Agent so that he/she can arrange to handle the necessary advertising procedure through the Attorney General's Office. The Agent should furnish the Real Property Agent the following information:

1. The project number and county in which the cemetery is located, claimant and parcel number.
2. The approximate survey station of the graves, to include physical location.
3. The name of the cemetery, if it has one; if not, the name by which it is commonly known.
4. The name of the cemetery to which it is proposed to move the graves.
5. The approximate number of graves to be moved.
6. The names and addresses of the relatives of the deceased persons, if known; if not, this fact should be stated. If only a portion of the relatives are known, this fact should be stated.
7. The names of the deceased persons to be moved, if known; if unknown, it should be stated.

8. The name, address, and publication schedule of a newspaper circulated in the county in which the cemetery is located.
9. The names and address of the person or persons who own the land on which the cemetery is located.
10. A statement as to whether or not the right of way has been acquired or condemned in the location where the graves are presently located.
11. A statement of any facts pertaining to the cemetery that will be helpful in arranging for the removal of the graves.

After the procedures for advertising as specified by the statute have been complied with, the Real Property Agent will advise the Agent so that arrangements can be made to have the graves moved. Prior to advertising for Funeral Director, the Right of Way agent should first forward the following information to the Real Property Agent:

1. Copy of Board of Trustee minutes or resolution of approval for re-interment of remains if the new location is a church cemetery;
2. A copy of the new gravesite price(s) for each plot;
3. A copy of the cemetery/county requirements regarding vaults;
4. A minimum of two (2) quotes for vault prices; and
5. All completed next of kin forms ([FRM14-T](#))

These arrangements will consist of advertising for and awarding a contract for the removal of the graves. The procedures to be followed in advertising and awarding the contract will be similar to those outlined previously for the Public Sale of Improvements, except that the special Proposal and Contract for Grave Removal will be used (see [FRM14-U](#)). An envelope addressed to the Division Right of Way Agent with the word "BID" stamped on the left side should be supplied with the proposal. Also, the date for the opening of bids should appear on the envelope. In preparing the proposal and contract, if it is necessary to furnish and place a new marker, it should be described fully in the space provided. A statement should also be made that the Contractor will provide for the installation of the new marker. The Agent should outline the disposition of the grave markers at the location of the original graves, that is whether they are to be reset at the new site or be otherwise disposed of. Due care must be taken of all existing tombstones prior to replacement. The Civil Rights compliance reference must be included in all proposals and contracts.

- (6) **After the bid opening the original of the recommended Proposal and Contract for the grave removal along with the original of all bids received**

should be forwarded by the Division Right of Way Agent to the Real Property Agent for acceptance or rejection. The Real Property Agent will notify the Division Right of Way Agent and the selected contractor of the type of performance bond required. A definite date for grave removal can then be set. The Division Engineer shall be notified by the Division Agent and asked to participate in supervising the grave relocations. One or more R/W Agents should also be on site during the disinterment process.

Within 30 days after completion of the contract, the Division Right of Way Agent shall be required to file with the Register of Deeds of the counties from which the disinterment and/or re-interment occurred a written certification of the removal facts ([FRM14-V](#)). Copies of the map for both disinterment and re-interment sites are to be attached to the certification. The maps shall contain the following minimum information: Project number, county, name of cemetery, disinterment or re-interment site, distance from nearest public road or intersection or roads in vicinity of cemetery, name of contractor moving graves, date re-interment completed and a north arrow symbol. The scale of the map should be one (1) inch to 20 feet unless reduced by approval of the Division Right of Way Agent. The maps should have sufficient information for a layman to identify the location of the disinterment and re-interment sites.

Should more than one cemetery be involved in the re-interment of the graves, separate certificates and maps should be filed for each cemetery. All information concerning the birth and death dates of all decedents should be included on the certificates.

14.23 CONVEYANCE (DISPOSAL) OF SURPLUS RIGHT OF WAY AND EASEMENTS AND CHANGES IN CONTROL OF ACCESS

The Department will review all requests for disposal of surplus right of way/easements or changes in control of access in accordance with the Department's **SURPLUS RIGHT OF WAY AND CONTROL OF ACCESS REVIEW COMMITTEE OPERATING PROCEDURES**. These procedures clearly define the steps taken to determine if the property in question is (1) considered surplus right of way/easements and/or (2) a revision to the control of access, and to facilitate approval or denial of the request. Initial requests typically are directed to the NCDOT District or Division Engineer's Offices, or the Division Right of Way Office, where the property is located.

If the Right of Way Agent is approached by an interested party with this request, the agent may provide existing right of way/easement and/or control of access limits, plan sheets or copies of deeds, easements, or agreements to the interested party and then direct them to the appropriate District Engineer. However, the process must officially start with a written request from the interested party to the District Engineer.

The District Engineer is tasked with obtaining information needed by the Committee for their review and recommendation of approval/denial of the request. The operating

procedures indicate the steps to be taken by the District Engineer and the information to be provided to the Committee. The Division Right of Way Office is to assist the District Engineer as needed with such things as meetings with the interested party and explanations of:

1. The items to be submitted by the interested party
2. The needed the remaining steps in the process should the request be approved
3. The typical time duration of the process after approval
4. The possible fees required by NCDOT should the request be approved.

The District Engineer will request that the Division Right of Way Agent complete and return to him/her a [FRM14-YY](#), a Property History Worksheet. The worksheet is critical in the process and so the Agent should make sure all questions are answered correctly and fully and necessary information is attached thereto. It is permissible for agents to attach additional information and/or written paragraphs of explanation should the particular situation be complex or unusual. Of particular importance is

1. The determination of whether the right of way/easement is held in fee simple or not. In some situations, only a portion of the right of way may be held in fee simple, and if that is the case, the agent should provide some type of diagram, plan sheet or survey showing approximately which portion is fee simple and which portion is not fee simple.
2. The determination of who owns the property adjacent to the right of way/easements or changes in control of access. This is important because the Department wants to convey changes in the right of way/easements/control of access to the adjacent owner, not to a third party. If there is more than one adjacent owner, the knowledge or consent of all parties should be obtained.
3. The determination of whether the right of way/easement was acquired through condemnation and if so, whether the condemned party still owns the adjacent property.
4. The determination of which category the property fits into (A) Secondary Road Abandonment (B) Residue (C) Surplus Right of Way/Easements (D) Control of Access Revision.
 - A. If Secondary Road Abandonment is determined, the District Engineer will handle via a separate process, and the matter will not be referred to the Committee.
 - B. If residue is determined, the Division Right of Way Agent should discuss with the District Engineer and the process for selling residues should be employed.

- C. If Surplus Right of Way/Easements is determined, the completed [FRM14-YY](#) and supporting documents should be transmitted to the Assistant State Negotiator or State Negotiator for review and concurrence. The Assistant State Negotiator or State Negotiator will sign the [FRM14-YY](#) and return to the Division Right of Way Agent who will then provide it to the District Engineer.
- D. If Control of Access revision is determined, the completed [FRM14-YY](#) and supporting documents should be transmitted directly to the District Engineer.

NOTE: If the right of way claim is active and has not been recorded or if the judgment in the condemnation claim has not been recorded, the request will not go through the Committee, but can be handled by plan change, if approved by the Division.

The Surplus Right Of Way and Control of Access Review Committee will review submittals from the Divisions and recommend approval, denial, or defer the request for additional information. During this process, the Division Right of Way Office may be called upon to answer questions or provide additional information needed for a decision. If the decision is denial, the Division Engineer will notify by letter the interested party.

Committee approvals are recommended to the Chief Engineer, who has the official approval authority for all surplus right of way and c/a change matters. Approvals by the Chief Engineer are forwarded to the Raleigh Right of Way Unit for further handling, and the Division Engineer will notify by letter the interested party.

The Raleigh Right of Way Unit will notify the appropriate Division Right of Way Office regarding the approval of the request. The notification will list any special requirements for the disposal and will include any maps/approvals that have been received.

For surplus right of way/easements and control of access revisions, there are different processes moving forward, depending on (1) the approval terms (2) whether the surplus right of way/easements are held in fee simple or not.

Fee Simple – Enhancement
Fee Simple – No Enhancement
Easement – No Enhancement
Control of Access Revision – Enhancement
Control of Access Revision – No Enhancement

The step by step procedures for each of these categories are contained within a document titled “**Surplus Procedures after Approval from Chief Engineer**”

Basic Guidelines:

Upon receipt of the notification from the Raleigh Right of Way Unit, the Agent should then contact the requesting party and advise them of the following:

1. If the right of way/easement is in fee simple, the requesting party should have fee ownership of the adjacent property to insure that the conveyance of the right of way/easement does not isolate any property. If the right of way/easement is not in fee simple, the requesting party will be required to sign an affidavit, [FRM14-XX](#), and no enhancement will be charged. If the right of way/easement was acquired by condemnation and was a total take then the requesting party must secure a release from the former owner prior to the Department conveying the property (the condemned former owner has a right of first refusal to repurchase the surplus right of way).
2. If enhancement applies, the requesting party must be willing to pay current fair market value enhancement value, appraisal cost and, if necessary, any engineering cost required for this disposal. A \$3,500.00 fee to cover the estimated appraisal costs must be secured prior to requesting any appraisals required. This deposit must be in the form of a certified or cashier's check accompanied by [FRM14-E](#). A requesting party is not obligated to proceed once they learn the enhancement value; however they will forfeit any portion of the \$3,500.00 fee that has been expended.
3. Surveys at the expense of the requesting party may be required.

The Raleigh Right of Way Unit will advise the Agent of the appropriate forms for the requesting party to sign and return. There are currently five variations of the [FRM14-BB](#).

For enhancements, the appraisal fee should be forwarded to the Raleigh Office with [FRM14-E](#) and appropriate [FRM14-BB](#). Upon receipt of the appraisal fee the Agent should proceed to request the appraisal from the Appraisal Section. The Appraisal Office will notify the Real Property Agent via email when the appraisal is available along with information regarding the cost of the appraisal with his transmittal.

After receiving the appraisal the Raleigh Office will notify the Right of Way Agent in writing of the total enhancement value and appraisal cost. Any deposits received will be deducted from the total costs.

When the Right of Way Agent receives his notification of costs he should proceed to contact the requesting party and advise them of these costs. If they are agreeable then the Agent will notify the Raleigh Office in writing and include a final description of the area to be conveyed.

All engineering costs involving Division expenses should be secured by the Division Office. The Right of Way Agent should contact the Division Office to verify they have made arrangements to secure their expenses prior to the delivery of any instruments of conveyance.

The preparation of instruments of conveyance as well as Board of Transportation and Council of State approval will be handled by the Raleigh Office.

The executed instruments will be sent to the Right of Way Agent for delivery and collection of any remaining payments. Any payments collected should be submitted to the Raleigh Office. Upon receipt of final payment or verification of delivery of instrument the Right of Way Agent should submit the necessary plan change through the normal plan change process for approval.

14.24 DEPARTMENT POLICY FOR THE SALE OF RESIDUES

Department policy relative to the sale of right of way residues and remainders is as follows:

1. The sale of all residues will be by public sale, except as hereinafter specified.
2. Residue properties sold by public sale are to be sold by either sealed bid, or by auction at the election of the Right of Way Branch. The sale of such properties must be advertised by publication in a newspaper having general circulation in the county in which the property is situated. After opening bids or closing of auction, no upset bids will be considered. The high bid shall be presented to the Department at its next regular meeting after the date of the sale for rejection or acceptance. The Department of Transportation reserves the right to reject all bids ([FRM14-Z](#)).
3. Those residue properties located adjacent to controlled access projects that are landlocked may be sold to the adjoining property owner by negotiation rather than public sale for a consideration not less than the appraised value of the residue ([FRM14-ZZ](#) formerly [frm14-aa](#)).
4. Residue properties may be sold to state agencies and institutions and other governmental units by negotiation rather than public sale for a consideration not less than the appraised value of the residue ([19A NCAC 2B.0143\[4\]](#)).
5. Surplus property acquired in connection with highway purposes may be used for the purpose of exchange with a public utility company in part or in full consideration for the property to be acquired for highway purposes from the

public utility company. Such exchanges shall be based on the appraised values of the surplus property and the property to be acquired for highway purposes. Residue property acquired in connection with right of way for a project may be used for the purpose of exchange in part or full consideration for right of way being acquired from another property owner on the project. Such exchanges are to be based on the appraised values of the residue property and the right of way to be acquired.

6. "Residues which have an area of one-half acre or less or a value of \$1,000.00 or less and the highest and best use is for assemblage with adjacent property, may be sold without advertising by negotiations to an adjoining owner. A value for the residue must be determined by either using the value in the original appraisal if less than one year old or sales of similar properties and sales of other residues, if any, in the area. After a value has been established, the Real Property Agent may negotiate with the adjoining owners concerning the disposal of each residue. The decision of the Manager of the Right of Way Branch to accept and complete a sale is final." ([19A NCAC 2B.0143\[6\]](#)).
7. The Manager of the Right of Way Branch is delegated authority to dispose of residues with appraised values of less than one hundred dollars (\$1,000.00) by executing and delivering on behalf of the Department of Transportation, a Quit Claim Deed to the buyers of such residues, after the transactions are first approved by the Board of Transportation. Conveyances of residues with appraised values of less than one hundred dollars (\$100.00) shall not require the approval of the Governor and Council of State ([19A NCAC 2B.0143 \[7\]](#)).
8. Residue properties, or portions of residue properties, acquired in connection with Right of Way for a project and located outside the Right of Way for that project may be sold by negotiation rather than by public sale to property owners and tenants who are displaced by the project for relocation of the displacee. Such sales are to be based upon the appraised value of the residue properties.
9. The approval for the sale of residue properties expires 2-years after the date of the approval letter from the Manager of Right of Way or State Administrator. This two-year limit includes appraisal time, advertising time, and Council of State approval with deed preparation.

Following the completion of a highway construction project, the project shall be surveyed to ascertain the number of residue properties which have been acquired. Following such survey inventories, the residues will be, as soon as practical, disposed of. Federal funds will be credited accordingly on the disposal of any residue acquired with Federal monies.

The sale of residues, and also buildable lots, referred to in item 6 above will be handled by the Division Agent similar to the sale and disposal of other residues under the supervision of the Real Property Agent Office. Where two or more adjoining owners are

involved, each shall be contacted prior to negotiations to ascertain their interest, if any, in the residue. If only one owner is interested, negotiations can proceed according to usual policy for sale of a residue to an adjoining owner. When more than one adjoining owner is interested, all should be furnished a bid form and allowed to submit a bid on the property for sale. The high bidder will be the successful purchaser.

The Real Property Agent should be consulted by the Division Right of Way Agent prior to his offering any residue or buildable lot for sale to the general public to avoid possible conflicts which might occur as a result of prior commitment or disposal by the Property Management Unit. The Division Right of Way Agent should know and convey to the Raleigh Office the opinions of the Division Engineer regarding the disposal of a residue or buildable lot at the time the request is submitted.

A residue card and sketch must be included with the submission of the Final Report to Raleigh so that an orderly and current tabulation of residues and buildable lots can be maintained. (See [FRM14-W](#) and [FRM14-X](#), on which the residue information should be submitted.)

14.25 EXCHANGE OF RESIDUES FOR RIGHT OF WAY

In certain instances prior to the completion of right of way acquisition, certain residue properties may be exchanged in consideration for, or in part consideration for, right of way to be acquired. Conveyances can only be exchanged or used as part settlement of a claim on the same project.

14.26 RETENTION OF RESIDUES FOR ADDITIONAL RIGHT OF WAY

Each residue should be examined to see if the entire residue, or a portion of it, should be retained by the Department as additional right of way for protection of the project. If so, upon the recommendation of the Division Right of Way Agent, the Real Property Agent, or the State Negotiator, arrangements should be made with the Roadway Design Department to have the necessary corrections made in the project plans. Careful consideration should be given to including excess property as right of way since the difficulty in changing the right of way may outweigh the advantages of retaining the property as a residue.

14.27 RETENTION OF RESIDUES FOR OTHER HIGHWAY USES

Frequently residue properties may be used to advantage by the Department for such purposes as material or equipment storage sites, sites for roadside picnic tables, sites for parking overlooks in scenic areas, or in some instances, as offices for construction or maintenance personnel where buildings are located on the property. Prior to the sale of residues, the Division Right of Way Agent should check with the Division Engineer,

and if he does express a desire for the property, the Real Property Agent should secure the approval of the Manager of Right of Way and the Assistant Chief Engineer – Operations before assigning the property to the Division. Each proposed sale should be checked with the Project Development Branch to insure that the residue will not be needed for, or affected by, a future project.

14.28 TRANSFER OF RESIDUE TO OTHER STATE AGENCIES OR LOCAL GOVERNMENT UNITS

Occasionally, other state agencies or local government units express a desire to acquire residue property; however, this occurs so infrequently that the Real Property Agent should consider such transfers only when approached by the state agency or local government unit. Transfers of property to other state agencies or institutions should be based on the appraised value of the residue, and these transfers will be handled through the Property Control Division of the Department of Administration. Transfers of property to local government units should be based on the appraised valuation and handled directly with the proper official of the local government unit. Transfers of property to other state agencies or institutions or to local government units will require approval of the Department and deeds of conveyance must be approved by the Council of State and the Governor.

14.29 PUBLIC SALE OF RESIDUE

Any residue not disposed of by transfer for other public use, by resale to the original owner or used in the settlement of a claim on the project should promptly, after completion of the acquisition of the right of way, be sold by public sale. Experience has shown that a higher bid is usually developed by means of sale by sealed bids after proper advertisement. In some unusual cases, it may be considered advantageous to sell by means of public auction; however, any deviation from the sealed bid method must be approved by the State Highway Administrator after recommendation of the Manager of Right of Way. Upon advice from the Real Property Agent that a residue or residues will be sold, the Division Right of Way Agent will advertise for the sale of the property. The advertisement should be published in a newspaper having general circulation in the county in which the property is situated and shall appear in two consecutive issues of the newspaper, with bids to be opened not earlier than ten days from the publication of the first advertisement. The Agent should place a "For Sale" sign similar to the example in [FRM14-Y](#) on the property. Assistance in preparing such a sign may be provided by the Division Sign Shop.

All adjacent property owners to the residue must be notified either by registered mail or personal delivery at the time of advertising, as well as any other person who may have expressed an interest or desire, to purchase the property, that same is to be advertised and sold. In the event of personal delivery, be sure that your copy of the notice indicates

when and who made the delivery. The advertisement should be placed in the classified ads section of the newspaper and should be similarly formatted as follows:

For Sale:

The Department of Transportation offers for sale a portion of lands formerly owned by J. D. Jones and located on U.S. Route 501, approximately 2.6 miles north of Durham. Only sealed bids on bid forms furnished by the Department of Transportation and placed in a sealed envelope with the words "Sealed Bid" and the bid opening date written on the front of the envelope will be considered. Bids will be opened on Friday, May 30, 1981 at 10:00 A.M. in the office of the Division Right of Way Agent of the Department of Transportation located at 815 Stadium Drive, Durham, N.C. Sealed bids shall be delivered to the above address or mailed to C. D. Parker, Division Right of Way Agent, Department of Transportation, P. O. Box 15580, Durham, N.C. 27704. Sealed bids must be received in the Office of the Division Right of Way Agent located at 815 Stadium Drive in Durham, N.C. prior to 10:00 A.M., Friday, May 30, 1981 or they will not be considered. The Department of Transportation reserves the right to reject any and all bids.

In the sale of residues, the Agent is to use the standard Department Bid Form for the sale of real property (see [FRM14-Z](#)). Prior to delivery of the Bid Form to the prospective bidder, the Agent should fill in all blank spaces of the form, except the space provided for the amount of the bid and furnish the bidder a self-addressed envelope with the word "BID" stamped in the left corner. In informing the bidder of conditions of the sale, the Agent should specify the following points:

1. That the successful bid must be approved by the Department and the Council of State, which may take as long as three to four month to secure approvals and deliver the deed.
2. That the State of North Carolina does not warrant title to property, which means that the purchaser accepts it subject to lax liens or other assessments that may be in arrears.
3. Unless there is an accurate survey of the property, the Agent should advise the prospective purchaser that the description is approximate and he should satisfy himself as to the area of land that is offered for sale.
4. It is extremely important, if the residue abuts a controlled access right of way, that the prospective purchaser is informed of the control of access limitations that are imposed upon the property.

At the time and place designated, the Division Right of Way Agent should open and read all bids received. Bids should be tabulated and the high bid determined. Any person present desiring to inspect the bids shall be allowed to do so. The bid deposit on the unsuccessful bids should be returned to the bidders. The same procedure for opening these bids should be followed as previously indicated for Sale of Buildings in

Section 14.24. The Agent should determine from the high bidder the name or names of the persons to whom the deed of conveyance should be drawn. The following information should be immediately forwarded to the Real Property Agent:

1. A transmittal letter showing the tabulation of bids ([FRM14-J](#))
2. All original bid forms received.
3. A recommendation as to the acceptance or rejection of the high bid.
4. The name or names of the grantees for the deed of conveyance.
5. A copy of the personal check which accompanied the bid. Once the bid is approved in Raleigh, and the approved contract is returned to the Right of Way Agent, the agent returns the personal check in exchange for a certified or cashier's check for 10% of the purchase price. The certified or cashier's check is then sent to the Real Property Agent with [FRM14-E](#).

If the amount of the high bid is less than the amount of the appraisal, the Real Property Agent is to review the bid with the Manager of Right of Way to reach a decision as to whether or not the sale will be recommended to the Department for confirmation. If an accurate survey of the residue is not available or adequate description cannot be written, the Real Property Agent should immediately request a survey by the Property Survey Section of the Location Department. Upon receipt of the survey, the Real Property Agent should request that the Attorney General's Office obtain confirmation of the sale from the Board of Transportation and, if necessary, the Council of State at their next regular meeting and prepare and have executed the deed of conveyance. The Attorney General's Office should be furnished with the name of the grantee to the conveyance, a legal description of the property to be conveyed, the consideration and any other pertinent information to the sale.

Upon receipt from the Attorney General's Office, the executed deed of conveyance will be forwarded by the Real Property Agent to the Division Right of Way Agent for delivery upon collection of any amount due on the purchase price.

14.30 RESIDUE APPRAISALS

Residues offered for sale to the general public or residues to be appraised for credit to the Federal Highway Administration must be appraised. The completed appraisal will be forwarded through the State Appraiser to the Real Property Agent, with a copy being retained in the office of the Area Appraiser.

14.31 INVENTORY OF PROPERTY

It will be the duty of the Real Property Agent to maintain an accurate up-to-date inventory of all residues and buildable lots acquired by the Department. This inventory should be maintained by counties and by projects. For this purpose, inventory cards are provided entitled Real Estate Owned by Department of Transportation (see [FRM14-W](#)). The cards and a sketch map ([FRM14-X](#)) are to be prepared in the office of the Division Right of Way Agent and sent to the Raleigh Office with the Final Report.

In addition to the inventory of residues and buildable lots by inventory cards, the Real Property Agent must also maintain and update the computerized master file of these residue properties. All residues and buildable lots owned by the Department of Transportation are listed by Division and County on this quarterly printout. Such information as location, previous owner, acreage, book value and availability for sale is shown. If a residue or buildable lot is bought, sold or there is a change in the information already on the printout, the necessary forms to illustrate the change must be submitted to the Fiscal Department for proper processing. This program has been developed so that each residue and buildable lot may be shown as an asset in the fiscal records of the North Carolina Department of Transportation.

Chapter 15 RELOCATION ASSISTANCE

15.01 Background

The Relocation Assistance Program originally began in 1962, when the Federal-Aid Highway Act of 1962, required that Relocation Advisory Assistance be made available to families displaced by right of way acquisition on all highway projects in which federal funds participated. The act also provided for the reimbursement as allowed under state law. The effective date of this legislation was October 23, 1962.

The Bureau of Public Roads issued its Policy and Procedures Memorandum 21-4-4, "Assistance for Displaced Families and Businesses", November 9, 1962, and revised it February 7, 1964. This PPM set forth rules and regulations implementing the provisions of the Federal-Aid Highway Act of 1962.

In 1965, The General Assembly of North Carolina enacted into law an act to authorize the State Highway Commission "to pay compensation formoving costs to the displaced occupants of buildings taken or partially taken by highway construction". The compensation provided in this law was up to \$200 for the moving cost of a household and not more than\$3,000 for the moving cost of a business, including farming operations and non-profit organizations. The effective date of the North Carolina law authorizing the payment of moving costs was September 1, 1965.

The Federal-Aid Highway Act of 1968 was signed into law August 23, 1968. Before North Carolina could put this program into effect, it was necessary to pass enabling legislation which was accomplished in the 1969 General Assembly. Article 13, Sections 136-156 through 136-166 of the General Statutes of North Carolina was passed into law by the 1969 General Assembly of North Carolina, effective January 1, 1970.

Public Law 91-646 was passed by the 91st Congress (Senate Bill 1), effective January 2, 1971. This bill is entitled the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970". Subsequent to this law, federal memoranda were issued.

The North Carolina General Assembly passed legislation [G.S. 133-5](#) through [133-17](#) in July, 1971, to be effective on January 1, 1972, in compliance with the previously mentioned Federal law. In June, 1975, the General Assembly passed [G.S. 133-10.1](#) to become effective uponratification to comply with the federal provision of "Last Resort Housing".

Pursuant to this law, the Board of Transportation passed an ordinance at its

December 1971 meeting setting forth the general rules and regulations to be followed in administration of this program.

On February 27, 1985, there was published in the Federal Register Vol. 50 No. 43, a new set of federal regulations that the Department adhered to. On December 17, 1987, an interim final rule was contained in 49 CFR, Part 24, which the Department adhered to. On March 2, 1989, there was published in the Federal Register, the regulation which is the final step in the development of a government wide single rule for implementing the Uniform Act. This regulation establishes a government wide single rule for the implementation of statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments to 1987 Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 [Amendments](#)), [Pub. L. 100-17, 101 Stat. 246-256](#).

The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. This regulation is intended to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible, while encouraging State and local discretion in implementing the Uniform Act's provisions.

Enabling legislation was passed on March 28, 1989, by the North Carolina General Assembly, thereby putting North Carolina in full compliance with the Uniform Act effective April 2, 1989.

The U.R.A. was again amended by publication in the Federal Register [at 49 CFR Part 24](#) on January 4, 2005, and changes were effective on February 3, 2005. Only one change had to be confirmed by the N.C. General Assembly, the increase in business searching expenses from a maximum of \$1,000 to \$2,500. Many other changes were made in the federal regulations, but none required re-writing the State statutes.

On October 1, 2014, the Uniform Act in Section 1521 of the Moving Ahead for Progress in the 21st Century Act ([MAP-21](#)) was implemented which revised the maximum statutory benefit for replacement housing payments for displaced homeowners and displaced tenants, the length of occupancy requirement for homeowners was reduced, [MAP-21](#) also amended the maximum statutory benefit for business reestablishment benefits and the fixed payment for nonresidential moves.

Any employee designated as an Agent should understand thoroughly these regulations and the Right of Way Manual. It is imperative that the provisions of federal and state law be observed without exception.

15.02 PURPOSE

The purpose of these regulations is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and subsequent amendments (42 U.S.C. and North Carolina [General Statutes G.S. 133-5](#) through [133-18](#)) in accordance with the following objectives:

1. To ensure that owners of real property to be acquired for State and Federal assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in State and Federal assisted land acquisition programs
2. To ensure that persons displaced as a result of State and Federal assisted projects are treated fairly, consistently, and equitably, so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole
3. To ensure that the North Carolina Department of Transportation implements these regulations in a manner that is efficient and cost effective.

15.03 REQUIREMENTS AND GUIDELINES FOR RELOCATION ASSISTANCE

The following are requirements and guidelines for providing relocation assistance to individuals, families, businesses, farms, and non-profit organizations on federal-aid and state highway projects. Such assistance will not be offered to those individuals, families, businesses, etc., located on state secondary road projects consisting of paving or otherwise improving unpaved secondary roads on which no federal funds will be used.

15.04 DEFINITIONS

A. Business

The term “business” means any lawful activity except a farm operation that is conducted:

1. primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities and/or any other personal property or

2. primarily for the sale of services to the public; or
3. primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
4. by a non-profit organization that has established its non-profit status under applicable federal or state law.

B. Buildable Lot

The term “buildable lot” means a parcel of typical residential property in which the owner is left with an interest after the partial acquisition of the owner’s property and the Department has determined it can be utilized as one (1) residential homesite.

C. Comparable Replacement Dwelling

The term “comparable replacement dwelling” means a dwelling that is:

1. decent, safe, and sanitary as further described,
2. functionally equivalent to the displacement dwelling. Functionally equivalent means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Department may consider reasonable trade-offs for specific features when the replacement unit is “equal to or better than” the displacement dwelling;
3. adequate in size to accommodate the occupants;
4. in an area not subject to unreasonable adverse environmental conditions;
5. in a location generally not less desirable than the location of the displaced person’s dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person’s place of employment;
6. on a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

7. currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement shall be based on similar government housing assistance;
8. within the financial means of the displaced person:
 - A replacement dwelling purchased by a homeowner in occupancy for at least 90 days prior to the initiations of negotiations is considered to be within the homeowner's financial means if the homeowner is paid the full price as further described, all increased mortgage interest costs as further described and all incidental expenses as further described, plus any additional amount required to be paid under last resort housing.
 - A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and utility costs for the replacement dwelling do not exceed the person's "base monthly rental" for the displacement dwelling (actual or economic rent + utilities; or 30% of income if the displacees income falls within [HUD's Annual Survey of Income Limits](#) for Public Housing and Section 8 Programs).
 - NEW provision: Tenants not meeting the length of occupancy requirements are eligible for the same payments, however they should be charged to the Last Resort function code.
 - NEW DEFINITION: The terms "mobile home" and "manufactured home" are considered to be synonymous. To be considered as a replacement dwelling, a "recreational vehicle" or boat must be the displacee's primary place of residence, and meet all local and state codes and ordinances.

D. Contributes Materially

The term "contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs, or during such other periods as the Department determines to be more equitable, a business or farm operation:

1. had an average annual gross receipts of at least \$5,000; or
2. had an average annual net earnings of at least \$1,000; or
3. contributed at least 33 1/3 percent of the owner's or operator's average

annual gross income from all sources.

4. If the application of the above criteria creates inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate. (See Household Income below)

E. Decent, Safe and Sanitary Dwelling

The term “decent, safe and sanitary dwelling” means a dwelling that meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code such following standards shall apply, unless waived. Such waiver must be obtained from the Raleigh Central Office. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair.
2. Contain a safe electrical wiring system adequate for lighting and other electrical devices.
3. Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees for a displaced person, except in those areas where local climate conditions do not require such a system.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes, or in the absence of local codes, the following policies:
 - (a.) children under the age of 18 months may occupy the same bedroom as their parent(s).
 - (b.) children of the opposite sex under the age of 6 may occupy the same bedroom.
 - (c.) a person may qualify for a separate bedroom if that person has an incapacitating disability or needs space for medical equipment.
5. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet all in good working order and properly connected to appropriate sources of water and to a sewage draining system. In the case of a housekeeping dwelling there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility

service connections for a stove and refrigerator.

6. Contains unobstructed egress to safe open space at ground level. If the replacement dwelling unit is on the second story or above with access directly from or through a common corridor, the common corridor must have at least two (2) means of egress.
7. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by the displaced person

F. Department

The word “Department” means the North Carolina Department of Transportation.

G. Displaced Person

General

The term “displaced person” means any person who moves from the real property or moves his or her personal property from the real property (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act.):

- a. as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;
- b. as a direct result of rehabilitation or demolition for a project; or
- c. as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

Persons not Displaced

The following is a non-exclusive listing of persons who do not qualify as a displaced person under these regulations:

- a. a person who moves before the initiation of negotiations, unless the Department determines that the person was displaced as a direct result of the program or project;

- b. a person who initially enters into occupancy of the property after the date of its acquisition for the project;
- c. a person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;
- d. a person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Department in accordance with any guidelines established by the Federal agency funding the project;
- e. an owner-occupant who moves as a result of an acquisition that is not subject to the requirements of the Uniform Act or as a result of the rehabilitation or demolition of the real property (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to the Uniform Act);
- f. a person who the Department determines is not displaced as a direct result of a partial acquisition;
- g. a person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;
- h. an owner-occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Department will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations;
- i. a person who retains the right of use and occupancy of the real property for life following its acquisition by the Department;
- j. a person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations or a person who has been evicted for cause under applicable law.
- k. A person who is not lawfully present in the United States (also see Section 15.17).

H. Dwelling

The term “dwelling” means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

NEW DEFINITION: The term “dwelling site” means a land area that is typical in size for similar dwellings in the same neighborhood or rural area.

I. Farm Operation

The term “farm operation” means any activity conducted solely and primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

J. Federal Financial Assistance

The term “Federal financial assistance” means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

K. Household Income

A new definition for “household income” was added in the 2005 URA changes. It means total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to: wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does NOT include income from dependent children, full-time students under age 18, nor the value of Food Stamps or WIC.

L. Initiation of Negotiations

Unless a different action is specified in applicable Federal program regulations, the term “initiation of negotiations” means the following:

1. Whenever the displacement results from the acquisition of the real property by the Department, the “initiation of negotiations” means the

- delivery of the initial written offer of just compensation by the Department to the owner or the owner's representative to purchase the real property for the project. However, if the Department issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.
2. Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.
 3. In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

M. Lead Agency

The term "lead agency" means the N.C. Department of Transportation.

N. Mortgage

The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, (to include mobile home if considered to be realty for appraisal purposes), under the laws of the State, together with the credit instruments, if any, secured thereby.

O. Non-profit Organization

The term "non-profit organization" means an organization that is incorporated under the applicable laws of the State as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code.

P. Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance

Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance. Use [FRM15-RR](#) for this written notice.

Q. Owner of a Dwelling

A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

1. fee simple, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition;
2. an interest in a cooperative housing project which includes the right to occupy a dwelling;
3. a contract to purchase any of the interests or estates described above; or
4. any partial interest which the displaced person legally possesses in the acquired property; or
5. any other interest, which, in the judgment of the Department warrants consideration as ownership.

R. Person

The term “person” means any individual, family, partnership, corporation, or association.

S. Program or Project

The phrase “program or project” means any activity or series of activities undertaken by the Department of Transportation which may or may not receive federal financial assistance.

T. Salvage Value

The term “salvage value” means the probable sale price of an item, if offered for sale to knowledgeable buyers on the condition that it will be removed from the

property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

U. Small Business

A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a small business.

V. Tenant

The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

W. Uneconomic Remnant

The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Department has determined has little or no value or utility to the owner. The Department will offer to purchase it, and if the uneconomic remnant is purchased and is within the typical home site, its value will be deducted from the computed RHP.

X. Unlawful Occupancy

A person who occupies without property right, title, or payment of rent, or a person legally evicted with no legal rights to occupy a property under State law.

Y. Utility Costs

The term "utility costs" means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

15.05 RELOCATION PROGRAM PLANS

Relocation Environmental Report

Because of the requirements prior to approval of a project, certain information is necessary for the Environmental Impact Report. The Raleigh office will advise when a report of this nature is necessary. [FRM15-E](#) will be utilized for each alignment.

This information shall be obtained without contacts with individuals involved. The time spent in preparing this report should be charged to preliminary engineering.

Projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and non-profit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the Department which will cause displacement, and should include an Evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey and study that may include the following:

1. An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.
2. An estimate of the number of comparable replacement dwellings in the area including price ranges and rental rates that may be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of last resort housing actions should be instituted.
3. An estimate of the number, type and size of the businesses, farms and non-profit organizations to be displaced and the approximate number of employees that may be affected.
4. Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

15.06 NO DUPLICATION OF PAYMENTS

No person shall receive any payment under these regulations that would have substantially the same purpose and effect as compensation that the person receives under the State Law of Eminent Domain, or by insurance proceeds received which have the same purpose.

15.07 ASSURANCES AND MONITORING

The Department of Transportation has given to the Federal Highway Administration adequate assurances that on federally assisted projects the Department will provide and comply with the Uniform Act and these regulations. It should be noted that the Federal Highway Administration will monitor compliance of these regulations and the Department shall take whatever corrective action is necessary to comply with the Uniform Act and these regulations. Appropriate measures will be taken to carry out these regulations in a manner that minimizes fraud, waste, and mismanagement.

15.08 RELOCATION ASSISTANCE ADVISORY SERVICES

A. General

The Department shall carry out a Relocation Assistance Advisory Program which satisfies the requirements of [Title 6 of the Civil Rights Act of 1964, Title 8 of the Civil Rights Act of 1968, and Executive Order 11063](#) and offer the services described in paragraph B of this section. If the Department determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer the services to such person. A displaced person can refuse relocation services and still be eligible for payments.

B. Services to be Provided

The advisory program shall include measures, facilities, and services as may be necessary or appropriate in order to:

1. Personally interview each person to be displaced, determine the person's relocation needs and preferences and explain the relocation payments and other assistance for which the person maybe eligible, the related eligibility requirements and the procedure for obtaining such assistance.
2. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings ([FRM15-KK](#)), and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available.
 - a. The Department shall inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment and the basis for the determination in order that the displaced person is made aware of the amount of the replacement housing payment to which he or she may be entitled.
 - b. Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the

person to be displaced shall be notified that the replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

c. Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the Department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

3. Provide current and continuing information on the availability, purchase prices, and rent cost of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location. At a minimum, the questions at the bottom of [FRM15-B](#), Non-Residential Data Sheet, shall be discussed with the business displacee on the initial contact.

4. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

5. Supply persons to be displaced with appropriate information concerning Federal and State Housing Programs, Disaster Loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

6. Transportation shall be offered to all displacees to see comparable replacement properties.

7. Displacees shall be informed that public housing regulations may restrict the size of the dwelling to be subsidized. Also advise that public housing may be a longer term housing solution than the 42month period of URA benefits.

8. Any person who occupies property acquired by the Department, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Department.

15.09 EVICTION FOR CAUSE

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments

and other assistance set forth in this part unless the Department determines that:

1. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice, is later evicted; or
2. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
3. In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

15.10 ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES

A. Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1. In the case of an individual, that he or she is either a citizen or national of the United States or an alien who is lawfully present in the United States.
2. In the case of a family, that each family member is either a citizen or national of the United States or an alien who is lawfully present in the United States. The head of the household may make the certification on behalf of other family members.
3. In the case of an unincorporated business, farm or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operation officer on behalf of other persons with an ownership interest.
4. In the case of an unincorporated business, farm or nonprofit organization, that the corporation is authorized to conduct business within the United States.

B. The above certifications are shown on the Residential Data Sheet ([FRM15-A](#)), the Non-Residential Data Sheet ([FRM15-B](#)) and the Claim for Payment ([FRM15-K](#)). It is important that the appropriate individual sign each of these forms as explained above. Should the Agent have reason to believe that a person's

certification is invalid, he or she should request guidance from the State Relocation Coordinator.

C. An individual displacee illegally in the U.S. is not eligible for any relocation benefits.

D. Any illegal alien who is part of a family is not eligible for Relocation benefits for himself/herself unless the Department believes that his/her spouse, parent or child who is legal would face an “exceptional and extremely unusual hardship” in getting relocated. Thus, normally, only the legal family members would receive benefits as follows: (A) the moving payment would be based on the proportion of legal displacees to illegal displacees in the family (ex., three legal displacees and one illegal displacee means 75% of the normal moving payment would be paid to the legal displacees; and (B) an RHP or Rent Supplement would be based only on the comparability needs of the legal displacees (ex., could result in smaller comps with fewer bedrooms, and thus a lower payment), however, in come received by the illegal displacee would be included in the 30% tenant family income.

E. In the event that both parents are illegal, but they have only minor children who are legal, the above computed payments would be made to a “guardian-ad-litem” who will represent the best interests of the minor children. Check with the Clerk of the Court to request this arrangement. If there are any fees, pay by Verification of Services ([FRM15-N](#))

15.11 RELOCATION ASSISTANCE ON ADVANCE AND SPECIFIC PARCEL ACQUISITIONS

On advance and specific parcel acquisitions where a displacee will be involved, Relocation Assistance will be required the same as if an active project is underway.

15.12 INITIAL CONTACT WITH DISPLACEE

Prior to any initial contact with project displacees but once the right of way plans are received, the Right of Way Agent should make a project inspection to identify the number and type of displacees involved.

The Agent will at this time explain to the owner/tenant the Relocation Program as it affects his/her situation and provide a Relocation Assistance brochure identifying the areas that are pertinent to the displacee. The Agent will advise each residential displacee that they will be offered at least one comparable replacement dwelling and that no one will be required to vacate without at least a 90-day written notice. The Agent will prepare [FRM15-A/15-B](#) and will submit it

with the claim for payment and a copy of the [FRM 15-A](#) will be attached to the Evaluation, [FRM15-i](#). It should be stressed to the owner of any tenant-occupied property that our contact is made with a tenant for securing information only and that no authorization will be given at this time to the tenant to move. All information received from the displacee should be treated as privileged and only revealed to persons authorized by law or the Central Office.

On initial contacts involving businesses where fixtures are involved, the Agent will make an inventory of the business. The Agent should satisfy all realty/personalty issues at that time to determine what items will be eligible for moving payments.

Should there be questionable items involved, the Agent should have the inventory list typed and write a letter to the fee owner or his representative, copying same to the tenant, lessee, or other indicated owners of equipment, as applicable, and set up a date, time, and place for the meeting between all parties to determine ownership of the equipment. This letter should be copied to the State Appraiser, Area Appraiser and Area Negotiator. If possible, all parties should meet on the specified date for a determination of ownership and make any revisions in the inventory lists as deemed necessary.

After this meeting is held and the true ownership of all items of trade fixtures is determined, the Agent will submit a separate inventory form for owner of equipment to the Appraisal Section, along with his request for an appraisal. All inventory of personalty will be listed on [FRM15-V](#) by the Agent. Prior to determining a moving cost payment for the displaced business, the Agent must confirm the inventory of personalty is accurate and all-inclusive. Items initially listed as realty or personalty may have subsequently changed due to legal rulings.

Once the initial contacts on the improvements have been completed, there is usually a period of time before the Evaluation process commences. It is important that certain action be taken by the Agent during this interim period. Contacting local municipal and county agencies to ascertain their cooperation in assisting the project displacees is important in the relocation process. Through these local authorities, the Agent can procure pertinent land use regulations, health department requirements, building, mobile home and sign ordinances. Furthermore, through these contacts, the Agent can obtain utility schedules to be used in rent supplement computations as well as identify various housing resources in the locale. Such contacts and fact gathering may later expedite solutions to relocation problems therefore saving valuable time in the project schedule.

It is also suggested during this time period that for significant projects the Right of Way Agent Supervisors (Division Right of Way Agent, Area Negotiator and Area Appraiser) schedule a meeting and possible field inspection to review these

projects. The agenda of such meetings can give consideration to personalty and realty issues, septic/well problems, control access, treatment of mobile homes and signs, and particular right of way revisions that may eliminate involved displacees. Furthermore, other periodic Right of Way Supervisor meetings could address general concerns such as right of way schedule conflicts, reviewing status of various claims, and planning future coordination for right of way activities as needed.

15.13 REQUEST FOR REPLACEMENT HOUSING PAYMENTS

When the Appraisal Section has received and approved the appraisal on a residential property, the Agent's copy of the appraisal will be forwarded to the Division Right of Way Agent. The right of way schedule requires all residential appraisals to be delivered on a specific date to the Agent. However, it is suggested the Agent should communicate with the Area Appraiser prior to this date to ascertain the projected time period that any approved appraisals will be delivered to the office for Evaluation purposes. Such communication will assist the Agent in planning workload assignments. The Evaluation, [FRM15-i](#) is to be prepared and submitted to the Division Right of Way Agent for approval. On owner-occupied properties, the Agent will indicate the percentage that the value of the dwelling and home site will have to the approved appraisal by placing the percentage stamp on the appraisal and the Evaluation.

15.14 CONTACTS WITHIN 15 DAYS

The Department believes that the scheduling of our projects is such that no delay should be encountered in making offers of Replacement Housing. The offer of Replacement Housing Payment to an owner-occupant will be given on [FRM15-G](#) at the time the offer for the real property is made by the Agent. The tenant-occupant should be contacted within 15 days (if at all possible) of the initiation of negotiations on the parcel and advised on Form 15-H the amount of the Replacement Housing Payment. However, there may be occasions when a personal contact cannot be made in 15 days, and if this is the case, the Form 15-H should be sent by certified mail to the tenant, return receipt requested.

The offer of replacement housing payment should be made to the owner or tenant-occupant within 30 days from the date the Evaluation is signed by the Agent. The date the Agent signs the report must also be the date the key comparable is available. If the Agent cannot make the offer by the date specified, the Evaluation must be updated. The Agent can update the Evaluation by confirming that the selected comparable is still available. If so, he should so indicate on the Evaluation as follows: "Comparable still available on _____ (date); By ____ (signature) ____". Should the original comparable used or other comparable within the calculated price range not be available, a new

Evaluation must be computed.

In the past, the Department has had a few complaints from owners or landlords whose tenants have moved prematurely from their residences due to contacts made by the Right of Way Agent. This problem has caused a loss of rent to the owner between the time of contact and acquisition of the property by the Department. In order to correct or prevent this situation from happening, no notice to vacate will be given to any tenant-occupied properties prior to closing with the owner, or the date of filing in condemnation proceedings. For unusual cases, you are instructed to get a procedure from the Raleigh Office.

It is anticipated that there will be at least three contacts with either owner or tenant occupants as follows:

1. The initial contact will be made to deliver the [brochure](#), explain the program, and secure the necessary information concerning the make-up of a family or business and other information needed.
2. The second contact will be made if at all possible not later than fifteen (15) days for owners and tenants after initiation of negotiations, as described previously. The Relocation Program will again be reviewed with the displaced person. The displacee will also receive a 90 Day Letter of Assurance ([FRM15-CC](#)) which will start the displacee's federally mandated 90 Days of allowable time before requiring the displacee to move. The Agent should inform the displacee at this time that he/she will receive a 30 Day Notice to Vacate Letter ([FRM15-DD](#)) once the Department has closed with the owner of the property, or after condemnation proceedings have been filed on the property.
3. The third contact will be made with the owner and/or tenant occupants following either the closing of the claim or filing of the claim, at which time both the owner and the tenants will receive the 30 Day Notice to Vacate Letter ([FRM15-DD](#)) which will state the final date by which the owner or tenant must be moved from the subject property. A further explanation must be given so that any proposed replacement housing can be checked by the Agent to ensure that it meets the standards for decent, safe, and sanitary housing, plus any other requirements they must comply with to claim a payment. It should also be explained that the supplemental payment will not be paid prior to occupancy of the replacement property by the displacee except in unusual situations. Hardship cases will be considered on an individual basis. The payment of moving costs can be paid immediately upon the vacating of the dwelling if the displacee is eligible.

15.15 PROTECTIVE RENTALS

In certain situations, it may be advantageous to the Department to rent from a property owner vacated/vacant tenant dwellings/commercial properties between the time of initial contacts with the property owner and landlord and the claim being closed. Large older dwellings which would accommodate large families, multi-family structures, non-decent, safe, and sanitary houses and certain commercial properties present a relocation problem and could possibly be kept vacant by paying protective rent to the landlord for a period of several months. This would result in a saving to the Department by not having to relocate occupants where relocation payments would be much more costly than the rent payment. Generally, the amount of protective rent should not exceed either market rent (economic rent) or the amount of rent previously paid by the occupant. In most situations, it is not believed that an extended time of paying protective rent would occur since the original occupant would normally not vacate immediately after the offer was made to the owner.

Where possible, properties suitable for protective rental agreements should be identified at the time of initial contacts. If the property is occupied during initial contacts, the Agent should encourage tenants to remain in occupancy until the property is acquired. However, if it becomes feasible to relocate a difficult situation before acquisition of the property, the Agent should do so. If an agreement is not imminent, the Agent should contact the property owner to determine his intentions as to re-occupancy of the involved property. The Agent should request the property owner not re-rent the vacant building. If this fails, the Agent might inquire as to the rent the property owner might expect not to re-rent the property. Agents have authority to negotiate a rent on a month-to-month basis projected for a time period of approximately six months and not to exceed the monthly rent paid by the previous tenant unless prior approval is obtained from the Raleigh Office.

To pay protective rent to a property owner, prior to initiation of negotiations, approval must be requested and obtained from the Raleigh Office.

In those instances where the Agent has not been instrumental in causing the move, and an agreement is imminent, it may not be necessary to contact the property owner or it may be prudent to make one more contact to assess the property owner's intentions. When it is determined that agreement is not imminent, the Agent may proceed as above and, if necessary, negotiate a rent with the property owner.

Once a protective rental agreement is established (see [FRM15-VV](#), the Agent must request appropriate payments from the Raleigh Central Office each month using [FRM15-DDD](#).

15.16 NONTAXABLE PAYMENTS OR INCOME

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been designated as the Internal Revenue Code of 1986, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

15.17 NINETY DAYS WRITTEN NOTICE

No person lawfully occupying real property shall be required to move from a dwelling, farm, non-profit organization or business location without at least 90 days advance written notice of the intended vacate date. Any exception to the policy will be directed to the State Agent. Only in extreme cases will less than 90 days be approved. A 90-day notice cannot be issued to a residential displacee until a comparable property has been made available to the displacee.

In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if it is determined that a 90-day notice is impractical, such as when the person's continued occupancy would constitute a substantial danger to the person's health or safety. A copy of the determination shall be included in the displacee's file.

The 90-day notice for owners of advertising signs will be sent by the Agent when the claim has been filed on or closed as discussed in Chapter 9 in this Manual. A displacee is not eligible for relocation benefits until after the initiation of negotiations with the property owner, or after being given a Letter of Intent to Acquire. Therefore, once the offer has been made to the property owner, or a Letter of Intent to Acquire has been delivered, all displaced owners or tenants on that property should be given the 90 Day Letter of Assurance ([FRM15-CC](#)). This letter assures the displacee that they will have the federally required minimum of 90 days to relocate before NCDOT can take any measures to get them to relocate. This [FRM15-CC](#) must not be delivered to a residential displacee until after a comparable replacement dwelling has been made available to the displacee.

The 90 Day Letter of Assurance does not contain a final date by which the displacee must be moved. However, it does state that a second letter, a 30 Day Notice to Vacate Letter ([FRM15-DD](#)), will be sent to the displacee, and that the final vacate date will be stated in the 30 Day Notice to Vacate Letter.

The 30 Day Notice to Vacate Letter should not be sent until after NCDOT has acquired the property either through closing or filing of condemnation. The final vacate date shown on the 30 Day Notice to Vacate Letter should ensure that the displacee not only has at least 30 days to vacate from the date the 30 Day Notice to Vacate letter is delivered, but it must also allow for the original Federally

mandated 90 days to be fulfilled before requiring the displacee to vacate. An Agent should review the 90 Day Letter of Assurance in the file to determine when the 90 day period will or has ended, and adjust the final vacate date on the 30 Day Notice to Vacate letter accordingly.

For instance, if the closing or filing occurs in less than 60 days from the date of the delivery of the 90 Day Letter of Assurance, then the final vacate date shown on the 30 Day Notice to Vacate should be far enough in the future to cover both the 30 day period, and the remainder of the 90 day period the displacee was assured to receive. This may mean that the 30 Day Notice to Vacate Letter has a final vacate date which is more than 30 days from the date of the delivery of the notice to ensure that the displacee has been given there full 90 day period.

The above procedures involving the 90 Day Letter of Assurance and the 30 Day Notice to Vacate Letter should also be followed when dealing with owners of personalty occupying the right of way which must be relocated.

The 90 Day Letter of Assurance and the 30 Day Notice to Vacate Letter will be delivered to owners of advertising signs in the same manner as they are delivered to other displacees as previously discussed.

Since a 90 Day Letter of Assurance is delivered at the time of the offer to the property owner, this letter should be included in all relocation files. However, in rare cases where the displacee became eligible for relocation benefits either through a Letter of Intent to Acquire or by the Initiation of Negotiations, and moves prior to being given a 90 Day Letter of Assurance, the Relocation Diary ([FRM15-L](#)) should indicate that the displacee moved prior to the necessity for giving the 90 Day Letter of Assurance. Furthermore, if a displacee moves prior to the closing or filing date, but after being given a 90 Day Letter of Assurance, the [FRM15-L](#) should indicate that the displacee moved prior to a 30 Day Notice to Vacate Letter being sent.

It will be the responsibility of the Division Right of Way Agent to ensure that the property is vacated by the date specified in the 30 Day Notice to Vacate Letter. Should the displacee request an extension to their vacate date, the Division Right of Way Agent may grant an extension, if the situation is warranted and if the project schedule permits, unless there are unusual circumstances which would require approval of the Raleigh Central Office. If the extension is granted, the displaced person should be given this extension in writing by the Division Right of Way Agent and a new date specified when the property must be vacated.

Due to partial acquisitions, there may be occasions where a residence or business located outside the acquisition may have to relocate due to effects

caused by the highway project (control of access, acquisition of water supply and/or septic system, acquisition of the property's only septic repair area, etc.). In these situations, a 90 Day Letter of Assurance ([FRM15-CC](#)) should be given to the potential displacee at the time of the Initiation of Negotiations, along with an offer of relocation benefits. In the case of a possible residential relocation due to the above mentioned effects, the 90 Day Letter of Assurance must not be given until a comparable replacement dwelling has been made available to the potential displacee. Once the property has been acquired through either a closing or filing, a Notice of Construction ([FRM15-YY](#)) should then be delivered to the potential displacee. The [FRM15-CC](#) satisfies the Federal Regulation requiring a 90 day written notice to be given to all displacees who have been offered relocation assistance. The [FRM15-YY](#) serves as the displacee's notice of their one (1) year of eligibility to relocate to another location, and claim their relocation benefits.

There may be occasions where the displacee has failed to take proper action to relocate from the involved premises in a timely manner. If the Right of Way Agent has exhausted all efforts to assist the displacee to vacate the property and is anticipated that the displacee's continued occupancy will be a detriment to highway construction, the Division right of Way Agent should submit in writing to the Raleigh Central office a request for commencement of legal action for the Department to gain physical possession of the involved property. This request should include but not be limited to the following:

- (1) the date the property was acquired;
- (2) the vacate date as stated in the 30 Day Notice to Vacate Letter and extension dates, given if any;
- (3) project letting date;
- (4) a summary of assistance given to the displacee by the Area Relocation office including payments and referrals offered; and
- (5) a specific explanation of the reasons the displacee has not vacated the premises.

Based upon the circumstances of the situation and at the request of the Raleigh Central office, the Agent handling this particular relocation claim and/or the Division Right of Way Agent should be prepared to submit an affidavit of their actions which can be utilized in the legal action. During this period of legal action, the office should maintain close contact with the displacee to monitor his actions toward vacating the property. Furthermore, the Raleigh Central office should be kept fully advised of this situation until the Department has gained physical possession of the acquired premises.

After a building has been permanently vacated, the Agent will check to see that all utilities have been cut off, then proceed with the disposition and sale of the improvement. Consideration should be given to the use of state owned dwellings for sale to displacees, especially in areas where housing is at a premium. Clearance from the Raleigh Office should be obtained prior to making any offer of this type.

15.18 RIGHT OF WAY ACQUISITION AND RELOCATION ASSISTANCE FURNISHED BY MUNICIPALITIES

In certain instances, the Department may enter into agreement with municipalities to provide the right of way for a project anticipated by the Department as a Federal-aid project. Before federal funds may be used for any phase of these projects, it is required that relocation assistance be given by the municipality or others employed by them in accordance with Departmental and/or federal regulations. The Raleigh Office may request the Division Right of Way Agents to assure that the municipality provides an effective relocation program. In order that this can be properly handled, an agreement between the municipality and the Department of Transportation will be secured in which the municipality agrees to provide such relocation assistance to all displacees on the project.

In the event the municipality is not properly equipped to give this assistance, they may, by written agreement with the Department, have such assistance rendered by the Department, Urban Renewal, Redevelopment Commission, etc. Appropriate records and files must be maintained by the municipality to ensure future federal participation on any portion or phase of the project. The Division Right of Way Agents must maintain close scrutiny of the municipalities' files to ensure this requirement is met.

15.19 MAINTENANCE OF RELOCATION FILES AND RECORDS

The Division Right of Way Office will maintain a file for each displaced person as well as a general file for that project. In each individual file it is important that a copy of any form that has been initiated be kept, as well as diary notes about any activity such as offers of replacement housing, and other documents that would give a complete record of the activities on that displacee. The general project file for the project may have information that pertains to the project in a general way such as environmental reports, residential or business referrals and current information concerning security deposits, interest rates, utilities, rentals, damages, leases, closing costs, etc.

In addition to a file being maintained for each displacee, information located in

each file must also be currently maintained on the relocation computer screen. The information maintained on the Relocation computer screen should be updated by the Division Right of Way Office on a daily basis.

It should be noted in each file that any and all notices of eligibility and payments made to the property owner or occupant under these regulations shall be personally served or sent by certified first class mail return receipt requested. Each notice shall be written in plain understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or obtain help.

If a displacee voluntarily moves to a non-DSS dwelling, he cannot claim a replacement housing payment; however a moving payment is still eligible and should be paid promptly after the move. A memo (statement) will be written to the file explaining the circumstances.

15.20 REVIEW PROCEDURES

Should any person be dissatisfied with a determination as to his/her eligibility for a payment or the amount of the payment offered which he believes he should receive, he should request a review of his claim to the Manager of Right of Way. If the displacee desires, a Review Request, [FRM15-Y](#) is available which will help him in providing a written review. The Manager of Right of Way will provide a prompt review as appropriate for the displacee with the requirements of applicable law and these regulations:

- A. Actions which may be appealed. A person may file a written appeal with the Department in any case in which the person believes that the Department has failed to properly determine the person's eligibility for or the amount of a payment required or a relocation payment required under these regulations. The Department shall consider a written review regardless of the form.
- B. Time limit for initiating review. The time limit shall be 60 days after the person receives written notification of the Department's determination on the person's eligibility or amount of payment.
- C. Right to representation. A person has a right to be represented by legal counsel or other representative in connection with his or her review, but solely at the person's own expense.
- D. Review of files by person requesting review. The Department shall permit a person to inspect and copy all materials pertinent to his or her review,

except materials that are classified as confidential by the Department. The Department may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws. Material may not be removed from the building and a reasonable fee will be charged for copies.

- E. Scope of review. In deciding upon a review, the Department shall consider all pertinent justification and other materials submitted by the person, and all other available information that is needed to ensure a fair and full review of the claim.
- F. Determination and notification after review. Promptly after receipt of all information submitted by a person in support of his or her review, the Department shall make a written determination on the review, including an explanation of the basis on which the decision was made and furnish the person a copy. If the full relief requested is not granted, the Department shall advise the person of his or her right to seek judicial review. Under G.S. 133-17, as interpreted by the decision of the North Carolina Court of Appeals in *Henry vs. Department of Transportation*, 44 N.C. App. 170.260 S.E. 2d 438 (1979), the determination of relocation assistance payments is absolutely and solely in the discretion of the official of the agency making it, is conclusive and is not subject to judicial review. Under common law, such a determination is subject to judicial review only upon a showing of capricious, unreasonable or arbitrary action, or disregard of law, 1 N.C. Index 3D, Administrative Law Section 8.
- G. Department official to review claim. The Department official conducting the review shall be the Manager of Right of Way, as assisted by the Relocation Coordinator. The Manager will not have been directly involved in the action being reviewed.

15.21 SUBMITTING CLAIMS FOR RELOCATION PAYMENTS

A. Documentation

Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred such as bills or certified prices, appraisals or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment. The claimant will sign the [FRM15-K](#) certifying to the stated payments and each claim submitted to the Raleigh office shall include the Federal Tax Identification Form ([FRM4-M](#)) and the appropriate payment checklist, [FRM15-Z](#) or [FRM15-AA](#).

B. Expeditious Payment

The Department shall review claims in an expeditious manner. The Division Right of Way Office shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient claim documentation.

C. Advance Payments

If a person demonstrates the need for an advance relocation payment in order to avoid an undue hardship or to reduce such hardship, the Division Right of Way Agent shall request in writing that the payment be secured by the Raleigh office. This request shall include sufficient documentation to justify the payment such as [FRM15-G/FRM15-H](#) and [FRM15-A/FRM15-B](#), sales contracts, closing statements, invoices, etc. The Division Right of Way Agent should satisfy himself as to the validity of the request as a true hardship situation and not as a means to expedite the claim. Once the advance payment is personally delivered to the payee, the check stub will be signed by the payee and the Agent. A copy of the check stub will accompany the claim when it is submitted to the Raleigh Central office. It should be understood that the displacee must be in position to occupy the dwelling on or before the date the check is delivered. It is necessary to secure execution of the Occupancy Affidavit, [FRM15-EEE](#), in circumstances when occupancy must be postponed (such as to allow for repairs/updates to the replacement dwelling).

D. Time for Filing

All claims for relocation payments shall be filed with the Department within 18 months from the date of displacement for tenants and for owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later. This time period may be waived by the Department for good cause.

E. Multiple Occupants of One Displacement Dwelling

If two or more occupants of the displacement dwelling move to separate displacement dwellings each occupant is entitled to a reasonable prorata share as determined by the Department of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Department determines that two or more occupants maintain separate households within the same dwelling, such occupants have separate entitlements to relocation payments. To qualify as separate households, all rooms must be used privately, with no sharing of common rooms, especially kitchens.

F. Deduction from Relocation Payments

The Department will deduct the amount of any advance relocation payment from the relocation payments to which a displaced person is otherwise entitled.

However, when acquiring real property, the Department can no longer deduct from relocation payments any rent that the displaced person owes to the Department. The Department shall not withhold any part of a relocation payment to a displaced person to satisfy any obligation to any creditor.

G. Notice of Denial of Claim

If the Department disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for the determination and the procedure for a review of the determination.

15.22 PROCEDURE FOR DETERMINING DSS

As has been previously defined, it is necessary that all displaced persons expecting to receive the replacement housing or rent supplement payment must occupy a housing unit that meets the decent, safe and sanitary housing requirements.

In working a project, a contact should be made with the local municipality to obtain applicable building and housing maintenance codes. These should be compared with the requirements set forth for decent, safe and sanitary housing. Should the local requirements be less strict than contained in the defined decent, safe and sanitary requirements, then the decent, safe and sanitary requirements will take precedence over the local codes.

Proper inspection is required of all proposed replacement housing. It is suggested in making the first several inspections that the services of the local building inspector be solicited to assist in the inspections. The Agent should point out any deficiencies and note them on the DSS Inspection Report, [FRM15-J](#). A copy of this report should be given to the displaced person so that he will know the outcome of the inspection and should deficiencies exist, be in a position to have the owner correct them. Also, the name of the local housing inspector, if one is used, should be included on the file copy indicating his collaboration in the inspection.

It should be impressed upon the displaced person that should he fail to request the inspection of the property he proposes to occupy, he will forfeit his right to a supplemental payment should it not meet the decent, safe and sanitary requirements or cannot be rehabilitated to meet the requirements.

15.23 MOVING PAYMENTS AND RELATED EXPENSES

A. RESIDENTIAL -- ACTUAL COST

Any displaced owner or tenant occupant of a dwelling who qualifies as a displaced person is entitled to reimbursement of his or her actual moving and related expenses as the Department determines to be reasonable and necessary. The displacee may move by either:

1. A commercial mover based on the receipted bills for costs incurred not to exceed the lower of two (2) estimates obtained by the Department. In extreme circumstances, should two (2) estimates or bids be difficult to obtain, one (1) qualified estimate or bid would be permissible after prior approval has been obtained from the Raleigh Office. ([FRM15-Q](#)).

OR

2. The displacee may perform a self-move based on the actual expenses incurred up to the lower commercial estimate. ([FRM15-Q](#)). In extreme circumstances, should two (2) estimates or bids be difficult to obtain, one (1) qualified estimate or bid would be permissible after prior approval has been obtained from the Raleigh Office. The displacee must maintain adequate records. See [FRM15-C](#). Labor and equipment should be charged at the actual rates paid by the displacee, but not to exceed the rate charged by local moving firms. Should the displacee provide his family labor (or any unskilled labor) in the moving process, the payment should be based on local labor rates for unskilled packers and movers.

Eligible expenses for actual cost residential moves include:

- Transportation of the displaced persons and their personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the State determines that relocation beyond 50 miles is justified;
- packing, crating and unpacking and uncrating of the personal property;
- disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property (such as telephones, computers, cable TV, satellite dishes, pool tables, tuning of pianos, etc.). Charges by a utility company are limited to those utilities at the subject property, and are only for account start-up or changeover fees. Excluded are utilities such as water/sewer/gas/electric lines, different fuel sources than at the subject, tap-on fees, building permits, and any costs associated with bringing utilities to the dwelling;
- For the owner of a mobile home considered to be personalty, the cost to

have it disconnected from utilities, moved, set up, anchored, and reconnected to utilities at the edge of the mobile home (but not eligible for the cost to install or bring utilities to the edge of the mobile home). The costs for mobile home move-off and move-on permits and for final inspections of utility hookups at the unit are included. The cost to remove and reattach any appurtenances on the mobile home (such as skirting, decks, steps, porches, awnings) is included. The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made Decent, Safe, and Sanitary are included.

- A mobile home that is currently being used only as a storage unit will be handled as a non-residential miscellaneous move, with no utility reconnection fees allowed.
- storage of personal property not to exceed 12 months unless the Department determines that a longer period is necessary; cost of storage on real property already owned or leased by the displaced person is ineligible for reimbursement. The Division Right of Way Agent may grant any necessary period of time for storage of personal property if the situation is warranted, not to exceed 12 months. See [FRM15-JJ](#);
- insurance for the replacement value of the property in connection with the move and necessary storage;
- the replacement value of property lost, stolen or damaged in the process of moving (not through the fault or the negligence of the displaced person, his agent or employees) where insurance covering such loss, theft or damage is not reasonably available;
- The Department will generally not participate in more than one move of a displaced person; however, where it is known to be in the public interest, the State Agent may give prior approval to more than one move;
- The Department may participate in a payment for relocating personal property of a displacee that is moved onto remaining or other lands owned by the displaced person or his landlord;
- The actual reasonable cost of temporary lodging when the Department determines such costs are required because of unforeseen circumstances or the practical necessities of the moving operation. Reimbursement of such expenses will be allowed only for actual cost moves and is to be used only for short periods of time - usually a few days but up to a maximum of 30 days. The Division Right of Way Agent must evaluate each situation individually to determine the amount of time

in each case and give approval of the displacee eligibility for this payment prior to the displacee relocating from the involved premises as based on the following circumstances:

(1) temporary lodging reimbursement will be considered for those displacees who have to vacate the premises in order to meet the project letting schedule. Displacees categorized in certain other classifications would be eligible for temporary lodging regardless of the project letting schedule. Examples are: (a) residential owner-occupants of mobile homes that were considered personalty; and (b) residential tenant-occupants of conventional housing who relocate with the retained dwelling when it is moved from the acquired premises. This payment is not to be utilized as a method of convenience for the displacee, but only due to necessity.

(2) if a comparable replacement home was offered to the displacee during his ninety-day vacating period, the Division Right of Way Agent should not give approval unless there are extenuating circumstances subsequent to consultation with the Raleigh office ; and

(3) if approval is given, the Division Right of Way Agent should monitor the progress the displacee is making toward relocating to his permanent residence. In all cases, the Division Right of Way Agent must justify approval in writing. Claims for lodging must be supported with actual receipts. The daily allowance for lodging will be limited to the State's travel policy. No meal reimbursement is allowed. Should estimated motel charges equal or exceed a month's rent of other commercial temporary lodging, then the month's rent could be considered for payment;

- Other moving related expenses that are not listed as ineligible the Department determines to be reasonable and necessary.

B. RESIDENTIAL – FIXED RATE

Any person displaced from a dwelling or seasonal residence is entitled to receive a fixed payment rather than a payment for actual moving and related expenses, except that a person that has minimal possessions and occupies a dormitory style room, or a person whose residential move is performed by an agency at no cost to the person, shall be limited to \$100.

Actual and reasonable storage expenses and lodging can be reimbursed under this method of payment based upon the Division Right of Way Agent's written approval and justification that such payment will be in the best interest of the displacee and the Department.

UNFURNISHED UNITS

1 Room \$ 550.00

2 Rooms	\$750.00
3 Rooms	\$1,050.00
4 Rooms	\$1,200.00
5 Rooms	\$1,350.00
6 Rooms	\$1,600.00
7 Rooms	\$1,700.00
8 Rooms	\$1,900.00
Each additional room 150.00	

FURNISHED UNITS

1st Room	\$350.00
Each additional room 50.00	

The preceding schedules exclude unfurnished or unused rooms, halls, baths, attics, porches, garages, dressing rooms and utility rooms. However, should a displacee have sufficient storage in carports, garages, enclosed porches, attics, sheds or utility rooms, the Agent may count one additional room for each of these areas.

Discretion should be used when counting combination rooms-living/dining, kitchen/dining, etc. If, in the opinion of the Agent enough personalty is in these combination rooms, then two rooms may be counted provided that there is a minimum of 200 square feet. Otherwise, only one room may be counted.

Basements having 200 square feet and not partitioned will count as one room if utilized as living or storage area. For each additional 200 square feet, another room may be counted.

NOTE: By using this [Fixed Rate](#) method, the displaced person may move by any means available and no further documentation is required.

C. NON-RESIDENTIAL – ACTUAL COST

Any business, non-profit organization or farm operation which qualifies as a displaced person is entitled to payment for such actual moving and related expenses as the Department determines to be reasonable and necessary. The displacee may move by either:

1. a commercial mover, based on the receipted bills for costs incurred not to exceed the lower of two (2) estimates obtained by the Department [FRM15-Q](#). In extreme circumstances should two (2) estimates or bids be difficult to obtain, one (1) qualified estimate or bid would be permissible after prior approval has been obtained from the Raleigh Office. For signs and appropriate miscellaneous moves, ([FRM15-XX](#)) can be used as your bid form in lieu of [FRM15-Q](#).

OR

2. a self-move based on the actual expenses incurred up to the lower commercial bid ([FRM15-Q](#)). In extreme circumstances should two (2) bids be difficult to obtain, one (1) qualified bid would be permissible after prior approval has been obtained from the Raleigh Office. The displacee must maintain adequate records. Labor and equipment should be charged at the actual rates paid by the displacee but not to exceed the rate charged by local moving firms. See [FRM15-C](#),

Eligible expenses for actual cost non-residential moves include:

- Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Department determines that the relocation beyond 50 miles is justified;
- Packing, crating, unpacking, and uncrating of the personal property;
- Disconnecting, dismounting, removing, reassembling, and reinstalling relocated machinery, equipment, other personal property, and substitute personal property.
- This includes connection to utilities available within the building and account change charges by utility companies. It also includes modification to the personal property (including those mandated by Code or ordinance) necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing utilities available from the right of way on the same parcel to the building or improvement are also included;
- Storage of personal property not to exceed 12 months, unless the Department determines that a longer period is necessary. Cost of storage on real property already owned or leased by the displaced person is ineligible for reimbursement. The Division Right of Way may grant the necessary period of time for storage of personal property if the situation is warranted, not to exceed 12 months. See [FRM15-JJ](#);
- Insurance for the replacement value of the personal property in connection with the move and necessary storage;

- Any recurring licenses, permits or certifications required of the displaced person at the replacement location, however, the payment will be based on the remaining useful life of the existing licenses, permits or certifications (pro-rated up to one year).
- One-time permits or fees required because of the move, such as building permits, site plans, architects fees, survey costs, county inspection fees, etc. (ref. CFR 24.301(g)7);
- The replacement value of property lost, stolen or damaged in the process of moving, (not through the fault or the negligence of the displaced person or his or her agent or employees) where insurance coverage covering such loss, theft or damage is not reasonably available;
- Professional services that are actual, reasonable and necessary for planning the move of the personal property, moving the personal property and installing the relocated personal property at the replacement location. These professional services may include plant layout and design to place personal property within an existing structure, but not for a new structure constructed specifically for the displaced business;
- Re-lettering signs and replacing stationary on hand at the time of the displacement that is made obsolete as a result of the move;
- Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business, non-profit organization or farm operation (to include on-premise signs and miscellaneous items). See [FRM15-F](#). This type payment is a substitute for a payment of moving personal property which is not moved but may be disposed of by sale or trade-in. The payment shall consist of the lesser of:

1. The Cost to Move the Item.

Estimated costs of moving and reinstalling the item, but not to include any allowance for storage or reconnection costs for items which were in storage or not being used. If the business, non-profit organization or farm operation is discontinued, estimated moving cost shall not exceed 50miles. The estimated moving cost will be based on the lower of two acceptable bids obtained by the Department. In extreme circumstances, should two bids be difficult to obtain, one bid would be permissible after prior approval has been obtained from the Raleigh Office.

OR

A. IF THE ITEM IS NOT REPLACED AT THE NEW SITE: the Fair Market Value In Place for Continued Use LESS the Proceeds From the Sale.

To be eligible for the payment the claimant must make a good faith effort to sell the personalty, unless the Division Right of Way Agent determines such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on costs of goods to the business, and not to the potential selling price.

OR

B. IF THE ITEM IS REPLACED AT THE NEW SITE: The Replacement Cost of Substitute Personal Property LESS the Proceeds From the Sale/Trade-in Value.

The claimant must make a good faith effort to sell the personalty unless waived by the Division Right of Way Agent. Replacement cost of the substitute item shall include installation expenses.

PLUS

The Cost of the Sale. (Unless it is waived)

- Actual direct loss for advertising signs (off-premise). See [FRM15-F](#). The amount of a payment for direct loss of an advertising sign (off-premise) which is personal property shall be the lesser of:
 1. The depreciated reproduction cost of the sign, as determined by the Department, less the proceeds from its sale; or
 2. The estimated cost of moving the sign, but with no allowance for storage.
- Searching for a replacement location. The displaced business or farm operation is entitled to reimbursement for actual expenses not to exceed \$2,500 as the Department determines to be reasonable which are incurred in searching for a replacement location including:
 1. Transportation;
 2. meals and lodging while away from home;

3. time spent searching may include hours spent in obtaining permits, attending zoning hearings, and negotiating the purchase or lease of a replacement site;
4. time spent searching is based on an hourly rate set by NCDOT (\$25 per hr. as of 12-31-05);
5. fees paid to real estate agency or brokers to locate a replacement site, excluding any fees or commissions related to the purchase of such site.

Documentation of these expenses will be necessary on [FRM15-SS](#).

- For significant commercial or industrial moves where the actual moving expenses based upon bids may exceed \$20,000, it may be necessary that certain employees of the displaced business would be required to assist the commercial mover to relocate and reinstall the involved personalty. The labor costs associated with employees could be reimbursed under the actual cost method of moving, if prior approval is obtained from the Raleigh Central office. The following procedure would apply in this situation:

1. After consulting with the displacee and the commercial mover, the Division Right of Way Agent should determine the number and names of the essential employees needed from the displaced business to assist in the moving process. The remaining employees of the business would not be considered. The Division Right of Way Agent should satisfy himself the essential employees are necessary and this payment is not being utilized as another method to pay down time.

2. Once the Raleigh Central office has approved this reimbursement, the displaced business must tabulate each approved employee's daily work hours as assigned to the relocation process. The commercial mover must verify each approved employee's time. [FRM15-C](#), or specific employee time sheets can be utilized to document such labor expenses.

3. Depending on the circumstances and cost of this business move, the Raleigh Central office may require the Division Right of Way office to monitor the moving progress in confirming the accuracy of actual labor expenses.

- one-time impact fees or assessments for anticipated heavy utility usage;
- professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation, including soil testing, and feasibility or marketing studies (but not including any commission or fees directly related to the purchase or lease);

- low value/high bulk – when the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionately high to its value, the allowable moving cost shall not exceed the lesser of: (a) the amount which would be received if the property were sold at the site, or (b) the replacement cost of the same quantity delivered to the new business location;
- other moving - related expenses that are not listed as ineligible the State determines to be reasonable and necessary.

D. NON-RESIDENTIAL – SELF MOVE

1. If the displacee elects to take full responsibility for the move of the business, non-profit organization or farm operation, the Department may make a payment for the displacee's moving expenses in the amount not to exceed the lower of two acceptable bids obtained by the Department on [FRM15-Q](#). In extreme circumstances, should two bids be difficult to obtain, one qualified bid would be permissible after prior approval has been obtained from the Raleigh Office. An estimate not to exceed \$6,000.00 may be prepared by an Agent and approved by the Division Right of Way Agent (See [FRM15-R](#), Approval of Negotiated Move) in lieu of procuring bids from local commercial movers.

2. For uncomplicated claims of \$1,000.00 or less, an experienced Agent (Agent I classification) can prepare and approve an estimate to determine the displacee's eligible moving cost payment in lieu of procuring bids from local commercial movers. Use [FRM15-R](#), for this purpose.

3. Incidental moving costs such as searching fee, insurance, direct loss of tangible personal property, actual and reasonable storage expenses can also be paid under this method of payment. Other personalty moving costs not covered within the bids may be added at their actual, reasonable cost (examples include: moving and reinstalling existing telephone systems, computers, and items mistakenly left out of bids). Separate bids for parts of the move are acceptable (for example, for specialized items not normally moved by the main mover).

E. INELIGIBLE MOVING AND RELATED EXPENSES

A displaced person is not entitled to payment for:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership (retention);
2. Interest on a loan to cover moving expenses; or
3. Loss of goodwill; or

4. Loss of profits; or
5. Loss of trained employees; or
6. Any additional operating expenses of a business, farm or nonprofit organization incurred because of operating in a new location, except as provided in Section G. 1. j.; or
7. Personal injury; or
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department; or
9. expenses for searching for a replacement dwelling; or
10. Physical changes to the real property at the replacement location of a business, farm or non-profit organization, except as provided in C. (eligible expenses) and G. 1. a. through m. (re-establishment); or
11. Costs for storage of personal property on real property already owned or leased by the displaced person.

F. NOTIFICATIONS AND INSPECTIONS

The Department shall inform the displaced person in writing of the requirements necessary to claim payments as soon as possible after the initiation of negotiation.

1. The displaced person must provide the Department advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Department may waive this notice requirement after documenting its file accordingly.
2. The displaced person must permit the Department to make reasonable and timely inspections of the personal property at both the displacement and the replacement sites and to monitor the move.
3. Transfer of ownership. Upon request and in accordance with applicable law, the claimant shall transfer to the Department ownership of any personal property that has not been moved, sold or traded. (Contaminated or hazardous waste material must be excluded). See [FRM15-BBB](#).

G. RE-ESTABLISHMENT EXPENSES

In addition to payments available under Sections "C" and "D", a small business,

farm or non-profit organization may be eligible to receive a payment, not to exceed \$25,000.00 for expenses actually incurred in relocating and re-establishing such small business, farm or non-profit organization at a replacement site. Use [FRM15-X](#).

1. Eligible Reestablishment expenses: Re-establishment expenses must be actual, reasonable and necessary, as determined by the Department. They may include, but are not limited to the following:
 - a. Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance. This includes the necessary costs of well and/or septic system when public water and sewer are not available at the RW of the parcel; lot clearing and grading, etc.
 - b. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. Example: improving or expanding the parking lot to meet Code or ordinance requirements.
 - c. Construction and installation costs for exterior signing to advertise the business.
 - d. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting.
 - e. Advertisement of replacement location.
 - f. Estimated increased costs of operation during the first 2 years at the replacement site for such items as: lease or rental charges; personal or real property taxes; insurance premiums; and utility charges, excluding impact fees.
 - g. Other items that the Department considers essential to the re-establishment of the business.
 - h. In no event shall total cost payable under this section exceed the \$25,000.00 maximum. The Division Right of Way Agent would need to categorize eligible expense reimbursement and stipulate such expenses were necessary to reestablish the business (See [FRM15-X](#)).
2. INELIGIBLE Reestablishment expenses: The following is a nonexclusive listing of re-establishment expenditures not considered to be reasonable, necessary or otherwise eligible:
 - a. Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures.
 - b. Purchase of manufacturing materials, production supplies, product inventory

or other items used in the normal course of the business operation.

c. Interest on money borrowed to make the move or purchase the replacement property.

d. Payment to a part-time business in the home which does not contribute materially to the household income (See definition of “Material Income”).

3. Specific Procedures: To implement the Reestablishment payment certain procedures shall be followed.

a. Initial contact should be made in person with those landlords who have personalty located within the right of way that must be moved. Initial contact can be made by certified mail for those landlords that do not have personalty in the right of way (see [FRM15-FFF](#)).

b. All displaced small businesses, farm and non-profit organizations including landlords, must provide certification with copies of tax returns that the income they receive is being reported for tax purposes. If the income is not being reported on their tax returns we will not consider the activity a bonafide business, because they are not operating in accordance with State and Federal requirements and therefore not eligible for re-establishment payments. If the displaced activity is unquestionably a small business, farm, or non-profit organization; the Division Right of Way Agent may waive the income tax certification, except for landlords.

c. All business activities must have proper licenses and permits and be conducted in accordance with State and local codes and/or zoning requirements in order to be considered as a business eligible for reestablishment payments. Any questionable business activity should be investigated to insure it meets the necessary criteria to operate at the existing location.

H. BUSINESS FIXED PAYMENT

1. Any displaced business (except a landlord or an Outdoor Advertising Display) is eligible for a fixed payment, in lieu of a payment for actual reasonable and related moving expenses and actual reasonable re-establishment expenses. This payment, except for payment to a non-profit organization, would be equal to its average annual net earnings, as computed under paragraph 5 of this section, but not less than \$1,000.00 nor more than \$40,000.00 if the Department determines that:

a. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Department demonstrates that it will not suffer a substantial loss of its existing patronage; and

b. The business is not part of a commercial enterprise having more than three (3) other entities, which are not being acquired by the Department, and which are under the same ownership and engaged in the same or similar business activities. (For purposes of these procedures a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment"; and

c. The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. However, the Department may waive this test for good cause.

d. The business owns or rents personal property which must be moved due to displacement and for which an expense would be incurred, and the business vacates or relocates from its displacement site.

e. The business is not operated at a displacement dwelling or site solely for the purpose of renting such dwelling or site to others.

2. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

a. The same premises and equipment are shared;

b. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

c. The entities are held out to the public, and to those customarily dealing with them, as one business;

d. The same person, or closely related persons own, control, or manage the affairs of the entities.

3. Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses and actual reasonable re-establishment expenses, in an amount equal to its average annual net earnings, but not less than \$1,000.00 nor more than \$40,000.00. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Department determines that:

a. an acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

b. The partial acquisition caused a substantial change in the nature of the farm operation.

4. Any displaced non-profit organization may choose a fixed payment of \$1,000.00 to \$40,000.00 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses if the Department determines that:

a. It cannot be relocated without substantial loss of existing patronage (clientele or net earnings). A non-profit organization is assumed to meet this test, unless the Department demonstrates otherwise; and

b. Any payment in excess of \$1,000.00 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

5. The average annual net earnings of a business or farm operation are one half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site prior to displacement projected to an annual rate. If these two taxable years are not representative for the business because the proposed construction has caused an outflow of residents and a reduction in net income, it is possible to use other consecutive tax years if prior approval is received from the Raleigh Office. Net earnings include any compensation obtained from the business or farm operation by its principal owner, the principal owner's spouse and principal owner's dependents. This compensation would be identified as income received from the business or wages received from the business and reported as such for tax purposes. The displaced person shall furnish the Department proof of net earnings through income tax returns, certified financial statements or other reasonable evidence which the Department determines is satisfactory.

6. A fixed payment may be approved for a business that relocates onto the remaining property provided there are no similar replacement sites available, and the business can show support that they will lose existing patronage during

relocation due to being shut down, or having a loss of access for a period of time due to the project.

7. The determination for this payment will be made by the Relocation Coordinator from information furnished by the Division RW Agent. Adequate information should be compiled and submitted to reach a definite decision for each business, farm or non-profit organization. Should there be any questions regarding the qualification of any business, farm or non-profit organization, the matter should be discussed with the Raleigh office. Tax returns should be submitted to the Relocation Coordinator in Raleigh for verification, along with an [FRM15-S](#), an [FRM15-T](#), and a letter to the Relocation Coordinator which outlines the concerns and intentions of the business that would make them eligible for the Business Fixed Payment. These items must be submitted for approval prior to the offer of a Business Fixed Payment being made to the displacee. Once the Business Fixed payment is approved by the Relocation Coordinator, the Relocation Coordinator will sign the [FRM15-S](#) as approved, and the Right of Way Agent can then make the offer for the Business Fixed Payment to the displaced business.

I. PAYMENT FOR MOVING BIDS – VERIFICATION OF SERVICES

The Department will pay reasonable expenses incurred in obtaining bids for moving expenses not to exceed two bids per move. (See [FRM15-Q](#)). In case a third bid is deemed advisable or necessary, prior approval must be obtained from the Relocation Coordinator. When submitting a bill for payment where a bid has been made, complete and submit [FRM15-N](#). Also, send a copy of the bid and a copy of the bill from the bidder, and a copy of the bill from the bidder. The bidder must also complete a Vendor Registration Form ([FRM4-M](#)) with their proper mailing address and business tax identification number.

J. PAYMENT TO THIRD PARTY

By written arrangement between the Department, the displaced person, and the mover, the displacee may present an unpaid moving bill to the Department for direct payment. (See [FRM15-ii](#)).

K. HARDSHIP CASE PAYMENT

In certain instances, it may be necessary to request the replacement housing payment in advance of the move in order to eliminate a hardship being imposed on the displacee. In making this request, the same written request procedure and documentation will be required as stated in Section 15.21C. Once the payment check or checks are received they should be delivered once the criteria for each payment have been met. If a tenant is involved and it is in the best interest of the Department for the tenant to move prior to right of way acquisition, the Division

Right of Way Agent should denote this fact in his recommendation for payment.

L. OWNER RETENTION

When an owner retains his dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement. However, a moving payment to remove personalty from the house is eligible.

M. VERIFICATION OF MOVE

Immediately upon receipt of claim for payment, the Agent will verify the move and complete all information needed on the form. It is necessary that the location of the move be verified unless the move was made beyond the 50-mile limit or out of state. An inspection of the location from which the displacee moved should also be made to see that all personalty has been moved.

N. PERSONAL PROPERTY LOCATED OUTSIDE THE ACQUISITION

Where the acquisition of real property used for an eligible business, non-profit organization or farm causes a person to vacate a dwelling or other dissimilar real property not acquired, the additional expenses of moving such personal property may be eligible for appropriate moving payments. If there is personal property located outside the acquisition clearly associated with the displaced business, non-profit organization, farm operation or dwelling, costs to relocate or rearrange this personalty will be added to the total moving expenses.

O. SUBMISSION OF CLAIM TO RALEIGH

Following verification of move from the original to the new location, the claim can then be submitted to Raleigh requesting payment of the moving cost according to the method selected by the displaced person. It is imperative that copies of correspondence and forms pertaining to the move be submitted at this time with the payment request. As the diary will be submitted at this time, it will be necessary for a new diary sheet to be started to maintain a record of the contacts with the displaced person concerning future housing payments, if any, to which he or she may be entitled. (See [FRM15-L](#)).

15.24 REPLACEMENT HOUSING PAYMENTS

A. General Information

1. The replacement housing payment is the amount, when added to the amount for which the Department acquired the dwelling, equals the cost which the owner

is required to pay for a decent, safe and sanitary dwelling OR the amount determined by the Department as necessary to purchase a comparable dwelling, whichever is less.

2. It is the Department's responsibility to make available a comparable replacement dwelling unit and relocate the displaced person to his original ownership status if this is his or her desire. If the alternate tenancy status is desired by the displacee, the Department will be expected to make a reasonable effort to accomplish the request. If the optional housing is available, the rent supplement, if any, will be based on the specific option.

3. When a single family dwelling is owned by several persons, and occupied by only some of the owners, the replacement housing payment will be the difference between the total acquisition costs of the acquired dwelling and the amount determined by the Department as necessary to purchase a comparable dwelling. The Department is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Department would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Department may provide additional purchase assistance or rental assistance through Last Resort Housing, based on the approval of the Raleigh office.

If the owner-occupant displacees do not purchase, they will be entitled to receive a rent supplement payment if they rent and occupy a decent, safe and sanitary dwelling in accordance with the rent supplement program. However, the displacee cannot receive a rent supplement payment in an amount that exceeds the Replacement Housing Payment (RHP) amount he would have been eligible to receive as an owner-occupant.

An owner occupant owning only a partial interest must reinvest his share of the acquisition costs plus the computed supplemental payment in order to receive the maximum payment.

If this procedure creates an undue hardship on the occupants, the full facts along with a recommended solution should be submitted to the Raleigh Office for a determination.

B. Purchase of Replacement Property

For the purpose of purchase and occupancy, the displaced person "purchases" a dwelling when he/she:

- a. Purchases a dwelling; or
- b. Purchases and rehabilitates a substandard dwelling; (When the replacement

dwelling selected by the displacee has decent, safe and sanitary deficiencies, the cost to correct deficiencies is eligible to the extent that the purchase price of the home site including the cost of the replacement dwelling, and the cost of correcting the deficiencies do not exceed the value of the comparable replacement property); or

- c. Relocates a dwelling which he or she owns or purchases; or
- d. Constructs a dwelling on a site he or she owns or purchases; or
- e. Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- f. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

15.25 EVALUATIONS

A. Guidelines for Computing Supplement Payments

1. Once the initial contacts have been made, the Agent should begin to familiarize himself with the subject properties and the real estate market.
2. When the copy of the approved appraisal is turned over to the Agent, he/she will be in a position to extract the information needed from the appraisal. He/she shall then select the appropriate comparables to be utilized in the Evaluation report.

Once this is accomplished, the Evaluator's Report ([FRM15-i](#)), along with the Agent's copy of the appraisal can be given to the Division Right of Way Agent for his review and approval.

3. Should the workload be such that the Agent will be unable to hold to the schedule for completion of Evaluations, the Division Right of Way Agent should notify, in writing, the Area Negotiator and the Raleigh Office so they will know about the situation and can give any needed assistance.
4. In cases where the number, age or sex of displacees occupying the subject property will indicate that a larger dwelling is required and more bedrooms are needed, this should be given consideration in selecting a comparable.
5. The subject property should be viewed and inspected by the Agent in order that "first hand" knowledge of the subject will be available for use in selecting a comparable. All comparables should be inspected (in addition to the use of

multiple listing data and/or information from Realtors and owners (i.e., FSBO – For Sale By Owner).

6. In cases where the approved appraisal has been voided and superseded by a revised appraisal, the Division Right of Way Agent would be required to review the revised appraisal to determine if the revision would affect the original replacement housing payment Evaluation computation. Should the revision affect the replacement housing payment computation, the Evaluation would have to be revised accordingly and a revised replacement housing payment would be offered to the displacee.

B. Determining Cost of Comparable Replacement Dwelling

The upper limit of a replacement housing payment shall be based on the cost of a representative comparable replacement dwelling.

1. If available, at least three representative comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. **No** adjustment shall be made to the asking price of any dwelling even if apparently justified by local market data. An obviously overpriced dwelling may be ignored. Use [FRM15-J](#), and [FRM15-W](#), to show pertinent data relative to each comparable.

2. If the site of the comparable replacement dwelling lacks a major exterior attribute at the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment (called a carve-out).

3. If an uneconomic remnant remains after a partial taking and the owner of the remaining property agrees to sell the remainder to the Department, and the remnant is within the typical lot area, then the residential fair market value of the remainder will be subtracted from the computed RHP. An uneconomic remnant situation should be noted in the Evaluation ([FRM15-D](#), and [FRM15-i](#)).

4. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling, and the remainder is determined to be a buildable lot, the Department may offer to purchase the entire property and if so, the fair market value of the remainder will be added to the acquisition cost for purposes of computing the replacement housing payment (i.e., use the total before value). The Division Right of Way Agent will decide if the remaining property is a buildable lot by reviewing the approved appraisal. If a determination cannot be made from the appraisal, the Division Right of Way Agent should contact the Area Appraiser for a determination. A statement should be inserted on the Evaluation indicating that the remaining land is a buildable lot. ([FRM15-D](#),

and [FRM15-i](#)).

5. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, nearby or similar neighborhoods where housing costs are generally the same or higher.

6. If other housing is available (that is comparable, except that it is not decent, safe and sanitary), the supplementary payment may be determined by getting an estimate of the cost to correct the decent, safe and sanitary deficiencies, adding this amount to the selling price of the replacement housing which is not decent, safe and sanitary, and comparing this amount with the amount paid the displacee for his dwelling together with an area of land typical in size for a home site in the general area. The owner of the non-decent, safe and sanitary house must agree to correct the deficiencies and quote the sales price with the deficiencies corrected.

7. If replacement housing is not available, the payment may be determined by adding the amount paid for the dwelling at the present location, together with an area of land typical in size for a home site in the general area, and then deducting this amount from the amount of a private contractor's firm bid of the replacement cost of a comparable decent, safe and sanitary dwelling to be located on a comparable home site.

8. There is a second alternative if replacement-housing comparables are unavailable. The payment will be the difference in the reproduction cost new value of the dwelling established in the approved appraisal that is added to the value of an available typical lot; compared to the appraised value of the subject dwelling together with the appraised value for an area of land typical in size for a home site in the general area. In order to use this method, the Appraiser must have confirmed this value in the appraisal report with data secured from local contractors. If data is omitted in the appraisal, such documentation can be procured from local builders.

9. Methods utilized in either Item #7 or #8 are less desirable since the comparable property is hypothetical and does not exist at the date of the Evaluation. Consequently, a 90-day vacating notice cannot be issued until a comparable property has been provided to the displacee. If a comparable property cannot be provided, a revised Evaluation will be required.

C. Mixed-Use and Multifamily Properties

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling

shall be considered its acquisition costs when computing the price differential.

D. Use of Market Rent - (Economic Rent)

Market rent should be used when determining a Rental Replacement Housing Payment:

1. For an owner-occupant, use the fair market rent for the displacement dwelling.
2. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances.

E. Partial Take

1. If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for the area less the appraised value of the acquired dwelling and the portion of the tract being acquired on which it is located plus any damages to remaining home site. If the Department has offered to buy the entire property as a buildable lot, then the Before Value in the appraisal (the total appraised value of the tract plus the appraised value of the acquired dwelling) must be used for purposes of computing the replacement housing payment.
2. If the acquired dwelling is located on a tract larger in size than typical for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling and the tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling, plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the area and any damages attributable to that portion of the typical lot outside the acquisition.

F. Dwelling on Land With Higher and Better Use

Where the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling, and the acquisition price of that portion of the acquired land which represents a tract typical for residential use in the area.

However, if the dwelling is written off (given no value for residential purposes) or given a nominal value for interim residential use in the approved appraisal, the

maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the entire acquisition price of the parcel.

G. Multiple Occupancy of Same Dwelling Unit

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants move together to a comparable replacement dwelling. However, if the Department determines that two or more occupants maintain separate households (i.e., no sharing of rooms) within the same dwelling, such occupants have separate entitlements to relocation payments.

15.26 REQUIREMENTS TO RECEIVE PAYMENTS

A. Occupancy Requirements

In addition to the tenure of occupancy provisions, a displaced persons eligible for appropriate payments when he or she relocates and occupies a decent, safe and sanitary dwelling within a one-year period (unless extended by the Department for good cause) beginning on the later of the following dates:

1. The date on which the owner received from the Department final payment for all costs of the displacement dwelling in negotiated settlements; or in the case of condemnation, the date on which the Department deposits the required amount in court,

OR

2. The date the Department has made available to the displacee at least one comparable replacement dwelling,

OR

3. The date on which the displaced person moves from the displacement dwelling. (For tenant occupants this is the only pertinent date.)

4. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

a. A disaster, and emergency or an imminent threat to the public health or welfare as determined by the Department.

b. A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and, for reasons beyond his reasonable control, such as delay in construction, military reserve duty, or hospital stay, cannot occupy the replacement dwelling within the time period shown above shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payment under these conditions would be deferred until actual occupancy was accomplished.

A displaced tenant or owner "occupies" a replacement dwelling within the meaning of this section only if the dwelling is his permanent place of residence, and he satisfies the eligibility requirements as set forth.

B. Inspection for Decent, Safe and Sanitary Conditions

Before making payment to the displaced person or releasing a payment from escrow, the Department must have inspected the replacement dwelling and determined that it meets the standards for decent, safe and sanitary housing. The Department may also utilize the services of any public agency ordinarily engaged in housing inspection to make the inspection.

Such determination by the Department that a dwelling meets the standards for decent, safe and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments under this section and is not representation for any other purpose. The Department will assume no responsibility or liability for structural, mechanical, legal or other unforeseen problems that are discovered after the inspection has been conducted. (See [FRM15-J](#)). If it is not possible under the circumstances for the Department to make the necessary inspection or to secure the needed inspection through a competent third party, a certification from the displacee that he has occupied decent, safe and sanitary housing may be sufficient to establish the displacee's eligibility for payment, as approved by the Raleigh Office.

C. Application for Replacement Housing Payment - [FRM15-K](#)

Application for Replacement Housing or Rent Supplement payments shall be in writing on a form provided by the Department (See [FRM15-K](#)). For tenant occupants, the application should be filed within 18 months of displacement, provided that the tenant occupied a decent, safe, and sanitary replacement dwelling within 1 year of the displacement, and requested at least their moving expenses during that 1 year period. For owner-occupants, the application shall be filed within 18 months of; (1) if the claim is settled, it will be either the displacement date or date of final payment, whichever is later, provided that the owner-occupant occupied a decent, safe, and sanitary replacement dwelling within 1 year of the displacement, and requested at least their moving expenses

during that 1 year period; or (2) in the case of condemnation, the date of displacement or the date the full amount of the estimated just compensation is deposited in the court, whichever is later, provided that the owner-occupant occupied a decent, safe, and sanitary replacement dwelling within 1 year of the displacement, and requested at least their moving expenses during that 1 year period. The Department may waive this time period for good cause.

The Replacement Housing Payment may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the lessor (landlord) for rent or the seller for use toward the purchase of decent, safe and sanitary dwelling or any other third party as designated by the displacee. (See [FRM15-ii](#)). In cases where an applicant otherwise qualifies for replacement housing payments and requests the Department to do so, such payments shall be paid into escrow prior to the displacee's moving.

D. Advanced Replacement Housing Payments in Condemnation Cases – Stipulation

No property owner will be deprived of the earliest possible payment of the replacement housing amounts to which he is rightly due. A Replacement Housing Payment can be computed and paid in advance to a property owner if the determination of the Department's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by using the Department's written offer for the property as the acquisition price.

Advance payments of such amount may be made upon the owner-occupant's agreement that upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the lower of the actual price paid or the amount determined by the Department as necessary to acquire a comparable, decent, safe and sanitary dwelling. Any agreement prepared must be agreed to and signed by both the owner and his attorney. If the amount awarded in the condemnation proceeding as the fair market value of the property acquired, plus the amount of the provisional replacement housing payment exceeds the price paid for, or the Department's determined cost of the comparable dwelling, the owner will refund the Department from the court award, a sum equal to the amount of the excess. In no event, shall he be required to refund more than the amount of the replacement housing payment advanced. If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

In the event this situation arises, the Division Right of Way Agent should prepare

the proposed Stipulation agreement, see [FRM15-iii](#), and shall forward it to the Raleigh Central office along with [FRM15-D](#), [FRM15-i](#) and a cover letter of explanation. This Stipulation will be executed by the displacee and his legal representative. The executed Stipulation should then be forwarded to the Relocation Coordinator in Raleigh and a copy be included in the claim for payment pertinent to the eligible replacement housing payment. Once the Raleigh Central office has filed the Stipulation with the court papers relative to the condemnation proceeding, the Department will pay the claimed replacement housing payment as directed in the claim for payment.

E. Information to Raleigh Office

Since the replacement housing payment is usually the last payment to the displacee, copies of correspondence, forms, documents, diaries, and any other related information not previously submitted should be forwarded at this time with the request for the replacement housing payment.

F. Documentation Support

Documentation of the purchase of replacement housing must be supported by the displacee submitting either the original or a certified copy of the HUD 1 closing statement and instrument of conveyance. Other documentation required is a completed Offer to Purchase signed by all parties, as well as a copy of the recorded Deed of Trust, if a mortgage was obtained on the replacement dwelling. In lieu of the availability of a closing statement, other supporting documentation is acceptable, i.e. cancelled checks, building contract receipts, etc.

G. Distance of Move

The distance a displacee moves will have no bearing on the receipt of a replacement housing payment. Should a move be made out of state by a displacee, notification to the Raleigh Office of the facts should be made and the Raleigh Office will handle the DSS inspection matter with the state to which the relocation has been made. [FRM15-J](#) should be submitted in duplicate with the request including the appropriate information inserted at the top of the form.

H. RHP Completed

The supplement payment will be established by the Agent and furnished to the Division Right of Way Agent for his approval. The approved appraisal and the amount of the approved supplemental payment, if any, will be returned to the Agent for his/her use in negotiating the claim on owner-occupied properties only. On tenant-occupied properties, the Agent will retain the rent supplement letter

and will advise the tenant ([FRM15-H](#)), within fifteen (15) days after the offer is made to the owner of the property, of the amount he/she may be entitled to receive.

I. Before Moving

The displacee should contact and secure from the Agent his written approval that the house proposed for purchase or renting meets decent, safe and sanitary standards. This information can be furnished by the completion of [FRM15-J](#). Close contact should be maintained with the displacee to anticipate his need for such approval in case he fails to notify you prior to moving. This applies both to replacement housing payments and rent supplement payments.

J. Ownership of Replacement Dwelling or Property Prior to Displacement

Any person who has obtained legal ownership of a replacement dwelling or land upon which his replacement dwelling is constructed or moved, either before or after displacement, and occupies the replacement dwelling after being displaced but within the applicable time limit, is eligible for a replacement housing payment if the replacement dwelling meets DSS requirements. The current fair market value of the previously owned property (land and improvements) will be used to determine if a replacement housing payment is justified. This will apply to remaining land as well. However, incidental closing cost or increased mortgage differential associated with the purchase of the previously owned property are ineligible for reimbursement.

K. Owner Retention of Displacement Dwelling

If the owner retains ownership of his or her dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of: (1) the cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and (2) the cost of making the unit a decent, safe and sanitary replacement dwelling; and (3) the current fair market value for residential use of the replacement site unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and (4) the retention value of the dwelling

L. Conversion of Payment

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a payment if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the

prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

M. Payment After Death

A replacement housing payment is personal to the displaced person and upon his or her death any undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
2. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling.
3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

N. Revision to Replacement Housing Amount

During the relocation period, if comparable housing within the originally offered replacement housing amount is no longer available, the Department will determine a new replacement housing amount based on available housing which is equal to or better than the subject and meets the other comparable criteria. The recomputed replacement housing payment can be lower than the original only if the displaced person has not committed to a dwelling based on the original replacement housing payment.

In certain instances where the Department has been furnished erroneous information by a displacee, it will be permissible to recompute a replacement housing payment offer which was based on the confirmed price of a comparable dwelling that "exceeds" the comparability requirement. For example, if the Department learns that the need for the additional space, room or special requirement has been eliminated before the displacement occurs, then a new payment should be computed to conform to comparability provided that the displacee has not actually committed himself in the purchase of a replacement dwelling to the extent that he would suffer financial loss if he does not complete the transaction. If he has so committed himself, the original replacement housing payment will not be revised. This policy will apply to both the long and short term owners and tenants.

O. Proration of Administrative Increases on Owner-Occupied Parcels

Where administrative increases are made over and above the approved appraisal, it will be necessary to prorate the increase on claims involving farm acreages, acreage tracts or misplaced improvements on other lands where the value must be extracted.

1. If there is a carve-out on an owner-occupied claim, the Division Right of Way Agent will stamp or write on the cover of the approved appraisal and on the Evaluation the percentage of the amount of the approved appraisal which is applicable to the house, typical lot, and typical improvements.
2. When an Agent settles a claim of this nature for an amount in excess of the approved appraisal, he/she should advise the owner at the time of negotiating the settlement that the replacement housing payment will be reduced on a prorated basis for the amount of the administrative adjustment which is applicable to the replacement housing payment. The Agent should calculate the deduction and advise the owner of the amount of the replacement housing payment he will receive if he qualifies. For example: The appraised value of the acquired dwelling and lot typical in size for residential use represents 50% of the total approved appraisal offer. A \$10,000.00 administrative increase in the right of way settlement would reduce the calculated replacement housing payment by \$5,000.00 ($\$10,000.00 \times 50\%$).
3. Once the Evaluation has been completed and approved on all owner-occupied properties, the Division Right of Way Agent will send a copy of the Evaluating Agent's Report ([FRM15-i](#)) to the State Relocation Coordinator with the normal claim package. Also, at this point in time, the amount of the replacement housing payment and the percentage of the approved appraisal are to be inserted on the computer relocation screen for each project parcel.

P. The Value of Sweat Equity

The value of the displacee's labor can be considered part of the actual cost of construction when the displacee builds or assists in building his/her own replacement dwelling. This labor could also include time and expenses involved in supervising the construction in cases where the displacee acts as his own general contractor. The expenses must be actual and reasonable and the profit factor should be deducted since this is not an incurred expense. This payment will be limited to the immediate displaced family's members and based on local labor rates. See [FRM15-C](#).

15.27 90-DAY OWNER OCCUPANT

A. Eligibility

A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

1. Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and
2. Purchases and occupies a decent, safe and sanitary replacement dwelling within one (1) year after the later of the following dates (except that the Department may extend such one-year period for good cause).
 - a. The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or
 - b. The date at least one comparable replacement dwelling is made available, or
 - c. The date the displaced person moves from the displacement dwelling.

B. Amount of Total Payment

The total replacement housing payment for an eligible 90-day homeowner-occupant is an amount not to exceed \$31,000.00. Any amount over \$31,000.00 will be considered in Last Resort Housing. The total replacement housing payment is the combined sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph C of this section; and
2. The Mortgage Interest Differential (MID), which is the amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) or equity line(s) of credit on the replacement dwelling, as determined in accordance with paragraph D of this section; and
3. The amount of the reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph E of this section.

C. Determination of Price Differential

The price differential is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

1. The reasonable cost of a comparable replacement dwelling; or

2. The purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.

D. Mortgage Interest Differential (M.I.D.)

The MID payment is provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling. The MID payment shall be the amount which will reduce the mortgage balance or equity line of credit on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the remaining mortgage balance(s) on the displacement dwelling. In addition, payments shall include other debt service costs (mainly points), if not paid as incidental costs, and shall be based only on bonafide mortgages that were valid liens on the displacement dwelling for at least 90 days prior to the initiation of negotiations.

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy-down determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 90 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

4. Purchaser's points and origination fees or assumption fees, but not seller's points, shall be paid to the extent:

a. They are not paid as incidental expenses.

b. They do not exceed rates normal to similar real estate transactions in the area,

c. The Department determines them to be necessary. If there are mortgages available to the displacee in the market place carrying equal or lesser interest rates with no points, then no points would be reimbursed in the purchase of the replacement property.

d. The computation of such points and fees shall be based on the unpaid

mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

5. If a displacee can only obtain a new loan at an above-market rate due to poor credit, the actual rate of the new loan can be used in the computation. In this case, approval should be obtained from the Raleigh office in advance.

6. The displaced person shall be advised on [FRM15-TT](#) of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known. The payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended. The final payment will be computed by use of the Mortgage Tool Box software program with a copy of the computation submitted with the claim for payment.

It will be the owner's responsibility to furnish the Agent the necessary information pertaining to the old and new loans for calculating this payment at least 30 days prior to the closing of the new loan.

E. Incidental Expenses

The incidental expenses (generally called closing costs) to be paid(see [FRM15-NN](#) are those reasonable and necessary one-time costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer. These are shown on the [HUD 1](#) Settlement Statement, [page 2](#), in three areas: the upper area (lines 800-815), the middle area (lines 900-1008), and the lower area (lines 1100-1310).

1. UPPER AREA (lines 800-815): These are one-time charges made by and paid to the mortgaging company, including loan origination fee and points (both are based on the lesser of the old mortgage balance or the new loan amount), appraisal fee, credit report fee, tax service fee, application fee, flood determination fee, commitment fee, bank courier fees, mortgage broker fee (if charged to the buyer), etc. All these expenses are eligible only if the displacee had an existing mortgage or equity line for 90 days prior to the offer.

2. MIDDLE AREA (lines 900-1008): These are charges for continuing expenses called prepaid expenses. With one exception*, NONE OF THEM ARE ELIGIBLE. Charges include pro-rated interest, hazard insurance, city/county property taxes, assessments, etc. If mortgage insurance is shown in this section, it is payable under certain circumstances as described below.

* Mortgage insurance premiums will be considered only if the mortgage insurance premium is required on a loan. If the owner occupant could have purchased the selected comparable by securing a conventional mortgage, without mortgage insurance, any mortgage insurance cost incurred with the

actual replacement home purchased is not considered to be required. In making a determination if the displacee could have purchased replacement housing without mortgage insurance, it will be assumed that the displacee would have put a down payment of at least the total amount of:

- (1) Equity received from the displacement dwelling.
- (2) Plus his eligible replacement housing payment.

Subsequent to this down payment, should mortgage insurance be required on the remaining loan balance in order to purchase the comparable replacement property, this amount will set the maximum reimbursement. Should the displacee choose to putdown a payment of a lesser amount, the amount of reimbursement for the mortgage insurance premium will be prorated. For tenants who become owners, reimbursement will be based on actual and reasonable costs.

3. LOWER AREA (lines 1100-1310): These are one-time charges for various expenses involved with the transfer (sale) of the property. They are normally eligible, as long as they are reasonable. They include: settlement/closing fee, title examination, title search, attorneys fee, escrow agents fee, notary fees, title insurance (based on cost to insure the comp or the replacement, whichever is less), copies/courier/wire fees, recording fees, revenue stamps (but only in areas where buyers commonly pay this cost), survey (limited to a comparable site), pest inspection (but not pest treatment), water and/or sewer inspection fees, home inspection fee, radon inspection fee, etc. NOTE that some fees listed in this section do not relate to the sale itself and are not eligible, such as homeowners' association fees, payoffs to other creditors, etc.

4. Such other costs as the Raleigh Office determines to be incidental to the purchase, and new fees which become standard in the industry over time.

5. There may be extenuating circumstances where the Department determines that the displacee needs to obtain a loan in order to relocate, although there is no existing loan on the acquired property. For example – in the case of an owner-occupant with a partial interest who must obtain a loan to purchase a replacement property. The cost of obtaining the loan could be considered “necessary” and would be eligible incidental expenses, if pre-approved by the Raleigh office.

F. Rental Assistance Payment for 90-Day Owner Who Rents

1. A 90-day owner eligible for a replacement housing payment who elects to rent a replacement dwelling is eligible for a rent supplement payment, not to exceed the RHP that he could have received as a 90 day owner. The payment shall be computed and disbursed in accordance with Section 15.28B (see below). The only exceptions to this computation are that the base monthly rental for the

displacement dwelling is the monthly economic rent plus the cost of utilities, and that the 30% rule does not apply (See 15.28C).

15.28 90-DAY TENANT

A. Eligibility

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$7,200.00 for rental assistance, as computed in accordance with paragraph B of this section, or down payment assistance, as computed in accordance with paragraph C of this section, if such displaced person:

1. Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and
 2. Has rented, or purchased, and occupied a decent, safe and sanitary replacement dwelling within one (1) year after:
 - a. In the case of a tenant, the date he or she moves from the displacement dwelling, or
 - b. In the case of an owner-occupant, the later of:
 - (1) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited in the court;
- or
- (2) The date he or she moves from the displacement dwelling.

B. Rental Assistance Payment

1. Amount of Payment. An eligible displaced person who rents a displacement dwelling is entitled to a payment up to \$7,200.00 for rental assistance. (The \$7,200.00 amount may be exceeded under provisions of Last Resort Housing). Such payment shall be 42 times the amount obtained by subtracting the "base monthly rental" (described below) for the displacement dwelling from the lesser of:

- a. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
- b. The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually rented and occupied by the displaced person.

2. The “base monthly rental” for the displacement dwelling is the lower of either a, b, or c (below):

a. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, normally one year. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person’s income or other circumstances, **or**

b. Thirty percent (30%) of the person’s average monthly gross household income if the amount is classified as “low income” in 8 Programs. Gross household income should include all sources of income to the displacee that is received at consistent and scheduled intervals. (See 15.04C, 15.04D). [FRM15-BB](#) should be used and attached to the Evaluation. If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph 2a of this section (above). A child under age 18, a full-time student, or a resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise, or

c. For those displacees receiving a welfare assistance payment from a housing program that designates the subsidized amounts for shelter and utilities, use the total of the rent designated for shelter and utilities. Example: if a HUD Section 8 resident receives \$500 per month subsidy and pays \$75 himself for a total rent of \$575, use the \$575 total rent as the base monthly rental. Then compare this to another Section 8 comp, if available.

3. Manner of Disbursement. The payment under this section shall be disbursed in a lump-sum amount unless the Department determines on a case-by-case basis, for good cause, that the payment should be made in installments or the displaced person requests periodic payments. However, except as limited by Section 15.26 (Payments after Death), the full amount vests immediately. Under vesting, the only time a rental assistance payment should change is during the one-year period after relocation (described in Section 15.28A2) and then only if the tenant elects to up-grade his housing to receive the full amount of the original computed rent supplement or to change their status from tenant to owner.

4. Evaluation. This payment will be computed utilizing the same forms as described for owners by filling in the tenant portions of the forms.

C. Down Payment Assistance Payment

1. Amount of Payment. An eligible displaced person who purchases a

replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive if the person rented a comparable replacement dwelling. A down payment assistance payment may be increased to any amount not to exceed \$7,200.00 including incidental costs if the computed rental assistance payment is less than \$7,200.00. When the rental assistance payment exceeds \$7,200.00, (Last Resort Housing) the down payment assistance payment will be based on the amount applied toward the purchase of a decent, safe and sanitary replacement dwelling but not to exceed the amount of the rental assistance payment. 2. Application of Payment. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expense.

D. Public Housing and Assistance

It is necessary that tenants not originally residing in public housing be informed that should they choose public housing, their rent supplement payment will be reduced or possibly eliminated due to the housing authority subsidy taking its place. However, the public housing might last much longer than the 42 months, and the displacee should be advised of this.

15.29 REQUESTING AN ADVANCE CHECK FOR TENANT DISPLACED TO COVER THE FIRST MONTH'S RENT PLUS THE SECURITY DEPOSIT AT THEIR REPLACEMENT RENTAL

The FHWA has approved the following actions for tenants who are placed in an undue hardship situation as a result of having to pay the first month's rent, plus the Security Deposit, prior to moving into a replacement dwelling.

A portion of the displacee's eligible Rent Supplement payment may be requested in advance in order to cover the cost of the first month's rent plus the security deposit at the replacement dwelling. This advance check will be made payable to the Landlord of the replacement dwelling. The amount of this advance check will not exceed the amount of the eligible Rent Supplement payment calculated for the replacement dwelling that is being rented. The following procedures must be followed in order to request this advance check.

1) Prior to requesting this advance check, the displacee and new landlord will either have to supply NCDOT with a written and signed lease showing all payments due upon signing, as well as the monthly rental amount, and having both the landlord's and the displacee's signatures, **OR** supply a signed copy of NCDOT's Verification of Rent form stating the date that the rental shall begin, along with the monthly rental amount, and the amount of the security deposit due at lease signing. These items will be necessary to support the payment that is

being requested.

- 2) The displacee must sign a Third Party Letter ([FRM15-ii](#)) allowing the payment of the first month's rent plus the security deposit to be paid to the new landlord. This payment shall not exceed the maximum eligible Rent Supplement payment calculated for the replacement dwelling that is being rented.
- 3) The landlord at the replacement dwelling will need to supply a completed and signed Tax Identification Form ([FRM4-M](#)) in order to receive the check in his/her name.
- 4) A Claim for Payment Form ([FRM15-K](#)) will need to be signed by the displacee in the amount of the first month's rent plus the security deposit. This amount should match the amount shown on the above mentioned Third Party Letter ([FRM15-ii](#)).
- 5) The [FRM15-K](#), the [FRM4-M](#) from the Landlord, and the above mentioned rental documentation will all be needed to request the advance check. All the other forms normally found in a Claim for Payment file and the Evaluation file are required to request this check as well.
- 6) Once the check has been printed, it is the Right of Way Agent's duty to present the check to the new landlord in the presence of the displacee in order to ensure that all the proper documentation is signed for the replacement rental, and to ensure that the landlord will allow the displacee to move in that day. It is imperative that the Right of Way Agent receive a copy of the first month's rent receipt for the relocation file. If a Verification of Rent form was signed prior to requesting the advance check, and subsequently a Lease was signed upon delivery of the check, then a copy of the Lease will be needed for the Relocation file.
- 7) Once the displacee has completed his/her move into their replacement rental, they will be eligible to request their moving payment, as well as any remaining eligible Rent Supplement payment.

Example 1: Displacee is eligible for \$10,000.00 in Rent Supplement based on the replacement dwelling, which rents for \$1,000.00 per month with a \$1,000.00 Security Deposit. If an advance check was requested for \$2,000.00 to cover the first month's rent and the security deposit, then the remaining \$8,000.00 of eligible rent supplement payment, as well as the moving costs, may be requested once the displacee has completed their move into the replacement dwelling.

Example 2: Displacee is eligible for \$1,500.00 in Rent Supplement based on the replacement dwelling, which rents for \$1,000.00 per month with a \$1,000.00 Security Deposit. If an advance check is requested to pay for the first month's

rent and security deposit, then the check will be in the amount of \$1,500.00, as this is all the displacee is eligible to receive as rent supplement. The displacee can request his/her moving payment after their move is complete, but he/she will not be eligible for any further rent supplement payment.

15.30 LESS THAN 90-DAY TENANT/OWNER

A. Rent Supplement

This section applies to tenants and owners who have occupied a dwelling for less than 90 days prior to the initiation of negotiations or who began to occupy it after the initiation of negotiations AND who are in occupancy at the time the Department obtains legal possession of the property (closing date or date of filing in a condemnation proceeding).

The benefits are calculated the same as above for 90 day occupants (section 15.28). The only difference is that the entire rent supplement or down payment is charged to Last Resort Housing.

B. Down Payment Supplement

If the less than 90-day occupant is eligible for a payment and purchases a decent, safe and sanitary dwelling, the down payment will be the lesser of the computed rent supplement or the actual down payment on the property purchased. This payment will be paid under last resort housing. Under this section, a rent supplement of less than \$7,200.00 can be increased up to \$7,200.00 if used as a down payment or to pay incidentals.

15.31 MOBILE HOMES

A. General

A tenant or owner-occupant displaced from a mobile home, or mobile home site, is entitled to a payment for the cost of moving his or her personal property on an actual cost basis or, as an alternative, on the basis of a fixed payment as described in the applicable Department schedule.

1. If a displaced mobile home owner (including a non-occupant owner) files a claim for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit and utility "hookup" charges at the base of the unit, and utility inspection fees are reimbursable. (The costs to install or bring utilities to the mobile home are not eligible.)
2. If the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at Section 15.32, the

owner is not eligible for payment of moving expenses for moving the mobile home, but is eligible for moving personal property from the mobile home.

3. If a mobile home requires repairs or a modification to enable it to be moved to a replacement site, and the Department determines that it is practical to do so, payment shall be limited to the reasonable costs of moving the mobile home and making such repairs or modifications.

B. Mobile Home Park Entrance Fee

Nonreturnable entrance fees are reimbursable as part of actual cost moving expenses unless the Department determines that comparable mobile home parks are available which do not require entrance fees.

15.32 90-DAY MOBILE HOME OWNER-OCCUPANTS

A displaced owner-occupant of a mobile home and/or mobile home site is entitled to a replacement housing payment not to exceed \$31,000.00 if:

A. The person both owned the displacement mobile home and occupied it on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

B. The person meets the other basic eligibility requirements; and

C. The Department acquires the mobile home as real property, or the mobile home is not acquired by the Department but the owner is displaced because the Department determines that the mobile home:

1. Is not and cannot economically be made decent, safe, and sanitary; or
2. Cannot be moved without substantial damage or unreasonable cost; or
3. Cannot be moved because there is no available comparable replacement site;

or

4. Cannot be moved because it does not meet city/county ordinances or mobile home park entrance requirements.

5. If the mobile home is not actually acquired, and the Department determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall

include the salvage value or trade-in value of the mobile home, whichever is higher (salvage value is defined in Section 15.04, Item T).

15.33 LESS THAN 90-DAY MOBILE HOME OCCUPANTS

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$7,200.00, if:

A. The person actually occupied the displacement mobile home on the displacement site for less than 90 days immediately prior to the initiation of negotiations;

B. The person meets the other basic eligibility requirements at Section 15.28A; and

C. The Department acquired the mobile home as real property, or the mobile home is not acquired by the Department but the owner or tenant is displaced from the mobile home because the Department determines that the mobile home:

1. Is not and cannot economically be made decent, safe, and sanitary; or

2. Cannot be moved without substantial damage or unreasonable cost;

or

3. Cannot be moved because there is no available comparable replacement site;

or

4. Cannot be moved because it does not meet city/county ordinances or mobile home park entrance requirements.

5. If the mobile home is not actually acquired, and the Department determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher (salvage value is defined in Section 15.04, Item T).

15.34 MOBILE HOMES - ADDITIONAL RULES

A. Persons with Both an Ownership and Tenant Interest

A displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in 15.27 B, D, E, F and 15.28B & C. However, the total replacement housing payment to a person shall not exceed the maximum payment (either \$31,000.00 or \$7,200.00) permitted under the section that governs the computation of the replacement housing payment or rental assistance payment.

B. Cost of Comparable Replacement Dwelling

1. When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a comparable replacement dwelling is the reasonable cost of a comparable replacement mobile home, including the site. This applies whether the displaced person's actual replacement dwelling is another mobile home or a conventional home.
2. If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.
3. If the Department determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Department may determine that for purposes of computing the price differential, the cost of a comparable replacement dwelling is the sum of:
 - a. The value of the mobile home.
 - b. the cost of any necessary repairs or modifications.
 - c. The estimated cost of moving the mobile home to a replacement site.

C. Initiation of Negotiations

If a mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he or she is a displaced person for the purposes of these regulations.

D. Person Moves Mobile Home

If the owner is reimbursed for the cost of moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment

to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

E. Partial Acquisition of Mobile Home Park

The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Department determines that a mobile home located in the remaining part of the property is required to move, the mobile home owner and/or any tenant occupant shall be considered displaced by the project and entitled to the relocation payments and other assistance in these regulations.

F. Occupant Buys Conventional Dwelling and Home site

If the displaced occupant owns both the mobile home and the home site, but the mobile home is considered personalty; the purchase of a conventional dwelling and home site will require certain consideration of these circumstances. If the displacee purchases the conventional dwelling and homesite for the full reinvestment amount as established by the purchased supplement Evaluation, the displacee will be eligible for the full amount of the replacement housing payment without any proration between dwelling and homesite.

15.35 REPLACEMENT HOUSING OF LAST RESORT

A. Whenever a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limit of \$31,000.00 for owners and \$7,200.00 for tenants, the Department shall provide additional or alternate assistance under the provisions of replacement housing of last resort. Any decision to provide last resort housing assistance must be adequately justified either:

1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
 - a. The availability of comparable housing in the project area; and,
 - b. The resources available to provide comparable replacement housing; and,
 - c. The individual circumstances of the displaced person; or
2. By a determination that:
 - a. There is little, if any, comparable replacement housing available to displaced persons within the project area and, therefore, justification for last resort housing assistance maybe necessary for the project; and,

b. The project cannot be advanced to completion in a timely manner without last resort housing assistance; and,

c. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs. (Will project delay justify waiting for less expensive comparable housing to become available?)

D. Basic Rights of Persons to Be Displaced

No person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under Chapter 15 or replacement housing of last resort. The Department shall not require any displaced person to accept a dwelling provided by the Department under these procedures (unless the Department and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

E. Methods of Providing Last Resort Housing

The Department has broad latitude in implementing housing of last resort, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project. The methods of providing housing of last resort include, but are not limited to:

1. A replacement housing payment in excess of the \$31,000.00 and \$7,200.00 limits. (A rental assistance subsidy may be provided in monthly installments or in a lump sum at the Department's discretion - see [FRM15-QQ](#).)
2. Rehabilitation of and/or additions to an existing replacement dwelling.
3. The construction of a new replacement dwelling.
4. The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
5. The relocation, and, if necessary, rehabilitation of a dwelling.
6. The purchase of land and/or a replacement dwelling by the Department and subsequent sale or lease to, or exchange with, a displaced person.
7. The removal of barriers to the handicapped.

8. The change in status of the displaced person with his or her concurrence from tenant to homeowner when it is more cost-effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

9. Under special circumstances consistent with the definition of the comparable replacement dwelling, modified methods of providing housing of last resort permit consideration of:

- a. Replacement housing based on space and physical characteristics different from those in the displacement dwelling.
- b. Upgraded, but smaller, replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent as described in Section 15.04C2.
- c. In cases where the displacement single-family dwelling does not meet decent, safe and sanitary requirements, the Department may use replacement housing of higher density or a mobile home (which meets decent, safe and sanitary requirements) in computing the replacement housing payment.

15.36 DISPLACEMENTS CAUSED BY DISASTERS OR EMERGENCIES

A. Circumstances Permitting Waiver of Policy on Making Housing Available

Should a major disaster or an emergency condition cause a person who is located on an active right of way project to move before the project would require the move, the Federal Highway Administration may grant a waiver of the policy on making housing available. The waiver may be given where it is demonstrated that a person must move because of:

1. A major disaster as defined in [Section 102 \(c\) of the Disaster Relief Act of 1974](#) (42 U.S.C. 5121); or
2. A Presidentially-declared national emergency; or
3. Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

B. Whenever a person is required to relocate for a temporary period because of an emergency as described above, the Department shall:

1. Take whatever steps are necessary to assure that the affected person is temporarily relocated to a decent, safe and sanitary dwelling.
2. Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in monthly housing costs incurred in connection with the temporary relocation.
3. Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements of a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

C. Insurance Proceeds

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (e.g. fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

15.37 PHOTOGRAPHS REQUIRED

- A. For occupied improvements, the Agent shall take a "before" and "after" photograph. These shall be included within the claim for payment package.
- B. "Before" photographs are required to document all other relocation claims. "After" photographs are not required unless they are essential to illustrate unusual features associated with relocation payments such as "after" photographs will not be required for small signs, or unoccupied miscellaneous buildings.
- C. A photograph of each comparable shall be attached to the decent, safe and sanitary inspection report ([FRM15-J](#)) and submitted with the Evaluation.
- D. A photographic inventory can be utilized in conjunction with a written inventory for displaced businesses and large miscellaneous moves. For miscellaneous moves up to \$1,000.00, a photographic inventory can be used exclusively.

15.38 ON-PREMISE VERSUS OFF-PREMISE SIGNS/BILLBOARDS RELOCATION

1. When acquiring bids to move any sign, whether it be an On-Premise Advertising Sign, or a Billboard, the bids that are obtained must show a Total Bid Amount, and include the breakdown of costs, most specifically the Disconnection costs and the Reinstallation Costs. Any transportation that is shown in a bid will be considered as part of the Reinstallation Costs. The bids must also show a Value In Place amount based on the depreciated value of the On-Premise Sign or Billboard.

2. When paying to move an On-Premise Advertising Sign we will pay the total amount of the low bid, including both the Disconnection and Reinstallation costs, as soon as they take the sign off of our acquired Right of Way. It is assumed that the business will need to reinstall the sign on-premise in order to continue advertising the business, therefore we will pay the full amount.

3. When paying to move a Billboard, we will pay the Disconnection costs once the Billboard has been taken down and removed from our acquired Right of Way, but we will not pay the Moving and Reinstallation costs until the Billboard actually gets reinstalled. Billboard regulations (both Local and State government) and leasehold interests in a Billboard both play a role in the decision to reinstall a billboard, therefore we cannot assume that a billboard owner will reinstall the billboard.

4. As mentioned above, our Moving Bids for signs must contain a Value In Place amount. The Value In Place amount comes into play when calculating a Loss Of Tangible Personal Property (LTPP) Payment. When the owner of a sign, whether it be On-Premise or Off-Premise, decides that they no longer want the sign, they don't want to move it, they want a new sign, or current regulations require a different type of sign altogether, then they would be eligible to receive the LTPP Payment for their sign or billboard. They can sign a [FRM15-BBB](#) (Affidavit for Loss of Tangible Personal Property), which grants all of their ownership interest in the sign or billboard to NCDOT, and then just leave the sign or billboard in place to be torn down during construction. This payment is based on two scenarios as follows:

a. If the Sign or Billboard Owner does not want to replace the sign or billboard at a replacement site, then the LTPP Payment will be the lesser of the total Moving Cost shown on the lower of the two bids, or the Value In Place amount for the sign or billboard shown on the lower of the two bids. To avoid confusion, and to keep things as simple as possible, we will use the Value In Place amount shown on the Lower of the two moving bids, even if the Value In Place amount is lower on the High Bid. We want to maintain our use of the lower of the two bids, just as we would use if we were paying the moving costs, even if this results in a higher LTPP Payment.

b. If the Sign or Billboard Owner does want to replace the sign or billboard at a replacement site with a new sign or billboard, then the LTPP Payment will be the lesser of the total Moving Cost shown on the Lower of the two bids, or the Replacement Cost new.

5. Per definition under the Federal Uniform Relocation Act, a Billboard is a business, to the extent that the owner of said Billboard would be eligible for Searching Expenses for searching for a replacement location for said Billboard.

a. Since every Billboard is considered as a separate business, then every displaced Billboard owner can request Searching expense reimbursement through relocation for every billboard which must be relocated due to a single project.

b. Billboards are not eligible for Reestablishment Payments or a Business Fixed Payment.

c. On-Premise signs are not considered as an individual business, and are therefore only eligible for a moving payment or Loss of Tangible Personal Property Payment.

Chapter 16 ACQUISITION BY CONSULTANT CONTRACT

In order to insure timely right of way acquisition on highway projects, the Branch has established procedures to contract with right of way consulting firms. The procedures for contracting right of way consultants are contained in the North Carolina Administrative Code at 19A NCAC 02B.0164 Use of Right of Way Consultants:

16.01 USE OF RIGHT OF WAY CONSULTANTS

- A. Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway system. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

This Rule is established for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of this Rule may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when waivers from portions of this Rule are justified. Guidelines for determining if a waiver is justified shall include:

1. Emergency situation exists that affects the health and Safety of the traveling public.
2. Availability of pre-qualified firms willing to perform specified work

- B. The following are incorporated by reference including any subsequent amendments or editions:

1. [General Statute 136-28.1\(f\)](#) and [General Statute 130A-444](#) thru [General Statute 130A-451](#).

2. [23 CFR 710](#)-720, FHWA right of way regulations which contain some contracting requirements.
3. 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the Right of Way Consultant Coordinator at a cost of five dollars (\$5.00) for each document.

- C. Definitions. The following definitions are for the purpose of clarifying and describing words and terms used in this section.
- (1) Right of Way Consultant Coordinator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.
 - (2) Cost per Unit of Work - A method of compensations based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
 - (3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
 - (4) Cost Proposal - A detailed submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
 - (5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.
 - (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
 - (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers' compensation and other such benefits.
 - (8) Proposal - An offer by a firm to perform specific work or services

for the Department at specified rates of compensation.

- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all the required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.
- (12) Right of Way Consultant Selection Committee - The Committee shall consist of the Branch Manager, Assistant Branch Manager, Unit Heads, and the Right of Way Consultant Coordinator or their designated representatives and shall be chaired by the Branch Manager. When federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be voting members.

- D. Application. This Rule shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars (\$10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).
- E. Pre-qualification of firms. The Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation when necessitated by its projected workload. The advertisement shall be published in the North Carolina Purchase Directory, a bi-monthly publication of N.C. Department of Administration. The advertisement shall indicate that interested firms must respond by letter to the Department indicating their interest within two weeks of the date of the advertisement. The response shall include the Federal Government's Government Accounting Office Forms 254 and 255, and copies of the firm's latest brochures. Additional firms may be considered for pre-qualification at any time that the Department recognizes a need based on current projected workload for additional pre-qualified firms. Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by contract including negotiations, appraisals, and relocation assistance;
- (2) Number of staff available to perform the services required by the contract including negotiations, appraisals, and relocation assistance;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous Right of Way acquisition contracts including meeting the time schedule for the work;
- (6) Equipment necessary to perform the required services.

A number of firms sufficient to perform the anticipated workload that meet the qualifications in Paragraphs E(1-6) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation. The number of pre-qualified firms to be maintained on the Department's pre-qualified list shall be determined by the Manager of the Right of Way

- F. Register of pre-qualified firms. The Right of Way Consultant Coordinator shall be responsible for maintaining a "Register of Pre-Qualified Firms" from whom specific project proposals may be solicited to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.
- G. Request for approval to solicit specific project proposals. The Right of Way Consultant Selection Committee through the Manager of Right of Way is responsible for determining when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Manager to solicit proposals for work. The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm as:

- (1) non-availability of manpower,

- (2) lack of expertise, or
- (3) other reasons.

- H. Solicitations of specific project proposals. Specific Project Proposals shall be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal Requests.

The Right of Way Consultant Coordinator, upon approval of the Manager of Right of Way, shall be responsible for preparing the request for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall require that all firms shall attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

- I. Selection of firm for specific project contract. The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm. In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

- (1) The monetary amount of the competitive proposal;
- (2) The firm personnel who are currently available to perform right of way acquisition services on the specific project and their qualifications; and
- (3) The ability of the firm to complete the work according to the Department's schedule.

Any firm selected to perform Right of Way Services for the North Carolina

Department of Transportation shall be required to establish an office in North Carolina, and may, at the discretion of the Department, be required to establish the office at the location of the project. This office shall be the location for maintaining all project records open for review by appropriate Department personnel.

After the authorization to proceed to negotiations is given by the Branch Manager, the Right of Way Consultant Coordinator shall notify the firm chosen by the Selection Committee.

- J. Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way Consultant Coordinator shall prepare an estimate of the cost of performing the work in-house. This estimate will be used in evaluating the acceptability of the selected firm's cost proposal.

If considered necessary by the Right of Way Consultant Coordinator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussion shall include:

- (1) Policies used by the Department for type and scope of work involved;
- (2) A copy of a contract in draft form;
- (3) Methods of payment;
- (4) Procedures for invoicing;
- (5) Standard forms to be used;
- (6) Fiscal requirements;
- (7) Items and services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy to the Right of Way Consultant Coordinator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by signature of the Right of Way Consultant Coordinator and an approved copy will be returned to the firm. The firm's competitive cost proposal shall be supported by a breakdown of the man-hours required to perform each of the services contained in the contract and the fixed bill proposal must also include a detailed breakdown of all non-salary direct costs and any sub-contract or fee services. Upon receipt of the selected firm's cost proposal, a review will be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. Where further negotiations are required, they shall be the responsibility of the Right of Way Consultant Coordinator. The final negotiations shall satisfactorily conclude all remaining points of

difference and shall consider any comments submitted by External Audit Unit. The Right of Way Consultant Coordinator with the concurrence of the Manager of Right of Way shall approve the final fee.

If acceptable contract cannot be negotiated, negotiations shall terminate, the firm will be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

- K. Board of Transportation approval and execution of contract. After final negotiations are complete, the firm shall execute a minimum of two contract originals and submit them to the Consultant Coordinator.

The Consultant Coordinator shall submit the contract to the State Highway Administrator who may consult with the Advisory Budget Commission pursuant to [G.S. 136-28.1\(f\)](#). The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way Consultant Coordinator.

The Right of Way Consultant Coordinator shall transmit one original contract to the contracting firm and shall retain one in the project file. The Consultant Coordinator shall provide each of the following with the copy of the contract: the Manager of DOT Program and Policy Branch; DOT Fiscal Section; and Federal Highway Administration when federal-aid funds are involved.

- L. Sub-contracting. A sub-contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way Consultant Coordinator. The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor will be responsible for submitting the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

- M. Methods of compensation:

1. Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be clearly defined and understood by both the Department and the contracting firm.
2. Cost Plus Fixed Fee - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined clearly and the Department needs more flexibility in expediting the work

without excessive amendments to the contract.

3. Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.
 4. Cost Per a Percentage of Cost - This method of compensation shall not be used.
- N. Administration of contract. The administration of the contract shall be the responsibility of the Right of Way Consultant Coordinator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.
- O. Contract Amendments. Each contract shall contain procedures for contract modifications and define what changes can only be made by means of a contract amendment. Any change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds as compensation for services, the contract amendment must be approved by the Federal Highway Administration.
- P. Monitoring of work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the Right of Way Consultant Coordinator.
- Q. Final payment - When it is determined that the work is complete, the final invoice shall be approved by the Right of Way Consultant Coordinator and forwarded to the Fiscal Section with recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.
- R. Termination of contract. All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

History Note: Statutory Authority [G.S. 136-28.1\(f\)](#); Eff. November 1, 1991
Amended Eff. August 1, 1998; October 1, 1993; November 2, 1992.

Chapter 17 HIGHWAY BEAUTIFICATION PROCEDURES

PART 1 – OUTDOOR ADVERTISING

17.01 HISTORY

National interest in controlling outdoor advertising first appeared in 1956 when Congress authorized the creation of the Interstate Highway System. Public opinion rose sharply concerning the need to control advertising on the Interstate network. In 1958, Congress took action by providing a voluntary program under which states could enter into agreements with the Federal Government to control outdoor advertising. States that entered into a program that controlled outdoor advertising were eligible for bonus Federal-aid payments. North Carolina was among the twenty-five states that chose not to voluntarily control outdoor advertising.

In 1965 Congress broadened the outdoor advertising control to include the Federal-aid Primary System. The [Highway Beautification Act of 1965](#), **Public Law 89-285**, abandoned the voluntary bonus program and required all states to make provisions for effective control of outdoor advertising within 660 feet of the right of way or else lose ten percent of their Federal-aid Highway Funds. The Federal-aid Highway Amendments of 1974 extended the control of outdoor advertising beyond 660 feet of the right of way.

As a result of the [Highway Beautification Act of 1965](#), the North Carolina General Assembly enacted the "Outdoor Advertising Control Act." [Article 11 General Statute 136-126 through 136-140](#). [General Statute 136-127](#), Declaration of Policy, states:

"The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right of way of the interstate and primary highways within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State,

to prevent unreasonable distraction of operations of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices."

In 1972, an agreement between the US Department of Transportation and the NC Department of Transportation was consummated. The effective date of North Carolina's outdoor advertising program was established on October 15, 1972.

In 1978, under amendments to the Surface Transportation Assistance Act, Congress provided that "just compensation" must be paid for the forced removal of all legally erected outdoor advertising signs adjacent to interstate and/or federal-aid primary routes. This prohibited states and local governments from amortizing signs along Interstate and Federal-aid Primary routes prior to removal. The penalty for failure to provide just compensation was set at loss of 10% of all federal-aid highway appropriations.

In 1982, the North Carolina General Assembly enacted legislation requiring local authorities to carry out the just compensation requirement should they require the removal of the sign structure(s) adjacent to interstate and federal-aid primary routes.

[General Statute 136-130](#) authorizes the Department of Transportation to promulgate rules and regulations governing the erection and maintenance of outdoor advertising permitted by the Act. [Section 19A NCAC4A .0107](#) provides the Secretary of Transportation is delegated the authority by the Board to adopt and promulgate all necessary rules, regulations and ordinances to control and regulate outdoor advertising in accordance with related state and federal rules, regulations and statutes. The Outdoor Advertising Manual was developed to provide a reference guide for persons concerned with those laws, statutes, codes and ordinances applicable to outdoor advertising controls.

The [Intermodal Surface Transportation Efficiency Act of 1991 \(ISTEA\)](#) authorized the use of transportation enhancement funds that included the removal of nonconforming outdoor advertising signs, among other programs, from the interstate and federal-aid primary highway system. Provisions pertaining to enhancement funding under ISTEA were extended in 1998 under TEA21.

17.02 DEFINITIONS

Sign - Any outdoor sign, sign structure, display, light, device, figure, painting, drawing, message, placard, poster, billboard, or other object which is designed, intended, or used to advertise or inform. A sign includes any of the parts or material of the structure, such as beams, poles, posts, and stringers, the only eventual purpose of which is to ultimately display a message or other information for public view. For the purpose of the outdoor advertising rules, the term "sign" and its definition shall be interchangeable with the following terms: outdoor advertising, outdoor advertising sign, outdoor advertising structure, outdoor advertising sign structure, sign structure, and structure.

Lease -An agreement, in writing, by which possession or use of land or interests therein is given for a specified purpose and period of time, and which is a valid contract under North Carolina laws.

Leasehold Interest - The lessee's interest is the present worth of the rent difference when the contractual rent at the time of the appraisal is less than the current market rent for a comparable site.

Illegal Sign - One which is erected and/or maintained in violation of the 1967 Outdoor Advertising Control Act or in violation of rules and regulations promulgated by the Department of Transportation or in violation of local zoning ordinances.

Conforming Sign - A sign legally erected in a zoned or unzoned commercial or industrial area which meets all current legal requirements for erecting a new sign at that site.

Nonconforming Sign -A sign which was lawfully erected but which does not comply with the provisions of State law or rules passed at a later date or which later fails to comply with State law or rules due to changed conditions. For the purpose of the outdoor advertising rules, nonconforming signs also include those signs which have become nonconforming pursuant to [19A NCAC 02E.1002\(d\)](#) on scenic byways which were part of the interstate or federal-aid primary highway system as of June 1, 1991, or which are or become a part of the National Highway System (NHS). Illegally erected or maintained signs are not nonconforming signs.

Sign Conforming by Virtue of the "Grandfather Clause" - A sign legally erected prior to the effective date of the Outdoor Advertising Control Act or prior to the addition of a route to the interstate or federal-aid primary system or NHS in a zoned or unzoned commercial or industrial area which does not meet all current standards for erecting a new sign at that site.

On-Premise/On-property Sign - A sign which advertises the sale or lease of the property upon which it is located or which advertises an activity conducted or product for sale on the property upon which it is located. An on-premise sign may not be converted to a permitted outdoor advertising sign unless it meets all rules in effect at the time of conversion request. An on-premise sign must be located on property contiguous to the property on which the activity is located. Tracts not considered to be contiguous include, but are not limited to:

- (a) Tracts of land separated by a federal, state, city, or public access maintained road:
- (b) Tracts of land not under common ownership; or
- (c) Tracts of land held in different estates or interests.

Abandoned Sign - A sign that is not being maintained as required by the outdoor advertising rules. The absence of a valid lease is one indication of an abandoned sign. An outdoor advertising sign structure shall be considered to be abandoned if for a period of twelve (12) months the sign has been without a message, contains obsolete advertising matter, or is significantly damaged or dilapidated. This category is noncompensable.

Zoned Commercial or Industrial Area - An area which is zoned for business, industry, commerce, or trade pursuant to a state or local zoning ordinance or regulation. Local zoning action must be taken pursuant to the state's zoning enabling statute or constitutional authority in accordance therewith. Zoning which is not part of comprehensive zoning or which is created primarily to permit outdoor advertising structures shall not be recognized as valid zoning for purposes of the Outdoor Advertising Control Act and the rules promulgated thereunder, unless the land is developed for commercial or industrial activity as defined under [02E.0203\(5\)](#).

Unzoned Commercial or Industrial Area - An area which is not zoned by state or local law, regulation, or ordinance, and which is within 660 feet of the nearest edge of the right of way of the interstate or federal-aid primary system or NHS, in which there is at least one commercial or industrial activity that meets all requirements specified in [02E.0203\(5\)](#).

Highway - A highway that is designated as a part of the interstate or federal-aid primary highway system as of June 1, 1991, or any highway which is or becomes a part of the National Highway System (NHS). A highway shall be a part of the National Highway System on the date the location of the highway has been approved finally by the appropriate federal authorities.

For other definitions, refer to the Department's [Outdoor Advertising Manual](#), [19A NCAC 2E.0201](#) and [G.S. 136-128](#).

17.03 OUTDOOR ADVERTISING CONTROL

The Roadway Maintenance Unit of the Division of Highways is responsible for the permitting of outdoor advertising signs and the control of outdoor advertising statewide in compliance with the Outdoor Advertising Manual. The Right of Way Unit will be responsible for the purchase and removal of nonconforming outdoor advertising signs on authorized sign removal projects as outlined in [GS 136-131](#) or will be responsible for the certification of acquisition/purchase of nonconforming outdoor advertising signs by local authorities as outlined in [GS 136-131.1](#).

General Statute [136-131](#) "Removal of existing nonconforming advertising." authorizes the Department of Transportation to acquire by purchase, gift, or condemnation all outdoor advertising, lawfully existing or erected, and all property rights pertaining thereto prohibited under the provisions of [GS 136-129](#), [136-129.1](#) or [136-129.2](#) and in compliance with [GS 136-140](#) "Availability of federal aid funds".

General Statute [136-131.1](#). "No municipality, county, local or regional zoning authority, or other political subdivision, shall without the payment of just compensation in accordance with the provisions that are applicable to the Department of Transportation as provided in paragraphs 2, 3, and 4 of [G.S. 136-131](#), remove or cause to be removed any outdoor advertising adjacent to a highway on the National System of Interstate and Defense Highways or a highway on the Federal-aid Primary Highway System for which there is in effect a valid permit issued by the Department of Transportation pursuant to the provisions of [Article 11 of Chapter 136](#) of the General Statutes and regulations promulgated pursuant thereto."

[General Statute 136-132](#) "Condemnation procedure" states that the Department of Transportation shall use the procedure for condemnation of real property as provided by [Article 9 of Chapter 136](#) of the General Statutes for the condemnation of nonconforming outdoor advertising signs.

NOTE: The procedures for the purchase and removal of nonconforming signs under the Outdoor Advertising Control Act are different from those procedures used for the acquisition of signs under eminent domain land acquisition as outlined in Section 9.01 of this Manual.

17.04 PROGRAMMING AND AUTHORIZATION

Outdoor advertising sign removal projects will be programmed and authorized through the Enhancement/Highway Agreements Unit of the Programming and TIP Branch of the Division of Highways. The Enhancement Advisory Council will

review and propose projects for enhancement funding to include those involving outdoor advertising sign purchase and removal. The actual purchase and removal of billboards and outdoor advertising signs cannot begin until authorization has been received from the Enhancement/ Highway Agreements Unit.

If a reimbursable enhancement grant is authorized whereby a municipality or other local authority will be responsible for the purchase of an outdoor advertising sign and its removal, the Right of Way Branch will insure the purchase is in compliance with G.S. **136-131.1** and will properly certify that Federal-aid acquisition regulations have been followed.

17.05 VALUATION

The method of valuation for outdoor advertising signs being purchased under the federal Highway Beautification Act of 1965 and the state Outdoor Advertising Control Act may involve the valuation of the sign structure itself, the valuation of the leasehold interest of the owner of sign structure in the property where the structure is situated, and the valuation of the leased fee interest of the property owner where the structure is situated.

Of the acceptable methods of appraising, the preferred method of valuing the fair market value of the sign structure is the cost approach or the "reproduction cost new less depreciation" approach. In the event the income approach to valuing a sign is deemed most appropriate for use in determining fair market value of a sign structure, only the reasonable net rental income attributable solely to that structure, with no consideration given for business operation expenses or income, should be capitalized. The method of valuing a sign using a gross income multiplier is not considered acceptable since it involves such items as business operation expenses and income, advertising contracts and revenues, and permits and licenses.

The method of valuation the fair market value for the leasehold interest will be based on the difference between the fair market rental value of the leased premises and the rent actually reserved in the lease. The value of this differential is referred to as the "bonus value" of the lease because if the fair market rental value is greater than the actual rent being paid by the lessee, the lessee would be receiving a "bonus" under the lease terms which, when projected over the remaining term of the lease and discounted to its present worth, would constitute damages which the lessee would be entitled to recover.

The method of valuing the leased fee interest of the property owner on which a sign structure owned by others is located shall be limited to the difference in the fair market value of the entire tract immediately before and immediately after the taking of the right for the sign structure to be maintained on that property, taking

into account any special or general benefits accruing to the property by reason of the acquisition. If the property owner is also the owner of the sign structure, compensation to the owner shall be limited to fair market value of the sign structure plus the difference in the fair market value of the entire tract immediately before and immediately after the taking of the right for the sign structure to be maintained on that property, taking into account any special or general benefits accruing to the property by reason of the acquisition.

If an appraisal involves the valuation of the sign structure and its leasehold interest and the valuation of the sign site, separate values should be allocated for the sign interests and the site interests.

For nominal valued nonconforming signs, the negotiation of reasonable payments for the removal of these signs will be allowed as follows:

1. For signs up to \$1,000.00
2. For sign sites up to \$250.00

An experienced Agent may negotiate, without prior review or approval, on the above basis using his/her knowledge of material and labor costs and familiarity with prevailing land values in the area. A record of the sign and site, similar to the form shown in [FRM17-A](#), should be completed by the Agent and submitted with the Final Report requesting payment for the sign and/or site. The applicable outdoor advertising sign and/ or site agreement ([FRM17-B](#) and [FRM17-C](#)) will be secured from the owner(s). Signs in this category may be retained by the sign owner or other party as part of the consideration for its removal. Note that payment for the sign shall not be requested until its removal has been verified by the Agent.

17.06 NEGOTIATIONS

Upon receipt of authorization to purchase signs under provisions of the federal Highway Beautification Act of 1965 and the state Outdoor Advertising Control Act, the Right of Way Agent will contact the appropriate District Engineer and obtain a copy of the permit issued by the Department of Transportation for each sign to be purchased. In addition, the Agent will confirm that the sign is nonconforming and obtain the proper ownership information for the property where the sign is situated. A picture of the sign will be taken.

After verifying the ownership of the sign, the Agent will contact the owner to advise that the sign will be purchased under the Outdoor Advertising Control Act provisions and provide the owner with a Legal Rights Brochure. A copy of the sign owner's lease with the owner of the property on which the sign is located should be obtained during this contact. If a copy of a lease is not available, the Agent should attempt to obtain a copy of a cancelled check in payment of rent to

the property owner or other information to establish a lease and legality of the sign. A diary (see [FRM17-D](#)) will be completed upon completion of the initial contact.

After the initial contact, the Agent shall request an appraisal from the Appraisal Unit for the value of the sign and its leasehold interest in the property on which it is situated and for the value of the property owner's leased fee interest in site on which sign is located. Separate values for the value of the sign structure and leasehold interest and for the value of the leased fee interest of the property owner should be provided. A copy of the sign permit, its lease, a cancelled check, or other documentation regarding the legal status of the sign, a picture of the sign with information as to its location, and property ownership information should accompany the appraisal request.

Upon receipt of the approved appraisal, the Agent will make an offer to the owner of the sign using the summary statement sample letter shown on [FRM17-E](#) and negotiate the claim for purchase of the sign in the same manner as on claims on a typical right of way project. The purchase of signs shall be handled by agreement with the owner as shown in [FRM17-B](#). On the agreement, the signature of the sign owner should be attested or witnessed; however, it will not be necessary to notarize the agreement since it will not be recorded.

The sign owner may retain the sign structure for a retention value to be determined in accordance with **Section 9.45** of this Manual. If the sign is to be retained, the paragraph pertaining to retention contained in the agreement with the owner shall be completed. If the owner does not wish to retain the sign, the paragraph pertaining to retention should be marked accordingly. The time period for the owner to remove a retained sign from the site should be as short as possible but shall not exceed 90 days.

The site owner, the owner of the real property on which the sign is situated, should be contacted after a satisfactory agreement has been reached with the owner. This contact may be a personal contact or a contact by letter in which an offer (see [FRM17-F](#) and [FRM17-H](#)) for the property owner's interest in the sign and/or the site on which it is located is made. The site owner need not receive a Legal Rights Brochure.

If the site owner settles this matter, an agreement as shown in [FRM17-C](#) will be executed. The signatures of the site owner should be attested or witnessed; however, it will not be necessary to notarize the agreement since it will not be recorded. If the site owner does not settle this matter after two contacts following the offer, the file with the site owner will be closed in most cases without condemnation being initiated. Some exceptions or questions may appear and in these cases the Assistant State Negotiator should be contacted.

In the event that condemnation proceedings are deemed necessary for the purchase of the sign or the site, those procedures as outlined in Chapter 13 of this Manual shall be followed.

NOTE: Relocation benefits do not apply to the acquisition and removal of nonconforming signs under the Highway Beautification Act of 1965 and the Outdoor Advertising Control Act.

17.07 PROCESSING AND PAYMENT

Final reports of payments to the sign owner and the site owner shall be submitted in accordance with the procedures outlined in Chapter 12 of this Manual. Permit numbers for the sign(s) shall be incorporated into the final report(s) for the sign owner and the site owner.

If the sign owner retains the sign, the final report should not be submitted for payment until the sign has actually been removed by the owner or the Department of Transportation if the owner retained the sign and later abandoned same before removal.

Warrants for payment of the acquisition of the sign and site interest may be mailed, return receipt requested, to the sign owner and the site owner.

After acquisition of the sign has been completed, the District Engineer should be notified of the acquisition of any nonconforming signs by the Department and advised that no permits shall be issued for that/those site(s) in the future.

17.08 REMOVAL OF BILLBOARDS/OUTDOOR ADVERTISING SIGNS

In those instances where settlement has been made on the basis of the sign not being retained, or in those instances where the owner does not remove the sign as agreed upon thereby abandoning it, the Agent should make provisions or contract for the removal of the sign(s). After removal of the sign(s) has been accomplished, the Agent can then request payment for the purchase of the sign(s).

PART 2 – JUNKYARD CONTROL

17.09 BACKGROUND INFORMATION

The Highway Beautification Act of 1965, Public Law 89-285, provided for the control of junkyards by the states in areas adjacent to the Interstate and Federal-Aid Primary Systems within 1,000 feet of the nearest edge of the right of way and visible from the main traveled way. Interstate and Federal-Aid Highways inside an urban area are excluded

Pursuant to the Federal legislation, the General Assembly of North Carolina in 1967, enacted the [Junkyard Control Act, Article 12, General Statutes 136-141 through 136-155](#). [General Statute 136-155](#) provides that the Department of Transportation shall not be required to expend any funds for the regulation of junkyards until Federal funds were made available to the states and the Department of Transportation has entered into an agreement with the U. S. Secretary of Transportation as provided for by the Highway Beautification Act of 1965. This agreement was entered into on June 27, 1973, and any junkyard established after this date must be in accordance with provisions of the Junkyard Control Act.

17.09A PURPOSE

The regulation, control, and acquisition of junkyards under the Highway Beautification Program in North Carolina have a two-fold purpose.

First, by complying with Federal legislation to insure that the State of North Carolina receives its full share of Federal-Aid Highway Funds. If the state did not comply with the Federal Highway Beautification Program, the state would be penalized by forfeiting 10% of its allotted Federal-Aid Highway Funds.

Second, to provide the traveling public in North Carolina with a safe, convenient, and enjoyable system of roadways free from unreasonable and unsightly distractions, and to preserve and enhance the natural and scenic beauty of the state.

17.10 DEFINITIONS

1. Junkyard - A junkyard is an establishment or place of business which is maintained, operated or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, used

salvage yards, scrap yards, auto-recycling yards, used auto parts yards and temporary storage of automobile bodies or parts awaiting disposal as a normal part of business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash, and other debris scattered along or upon the highway or temporary operations and outdoor storage of limited duration.

2. Automobile Graveyard - An automobile graveyard is an establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling used, wrecked, or scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. Ten or more such vehicles will constitute an automobile graveyard.
3. Illegal Junkyard - An illegal junkyard is one which was established or is maintained in violation of State law.
4. Nonconforming Junkyard - A nonconforming junkyard is one which was lawfully established, but which does not comply with the provisions of the State law or State regulations due with the provisions of State regulations due to changed conditions. An example of changed conditions would be a junkyard lawfully in existence in an area which at a larger date becomes non-industrial, and thus subject to control, or a junkyard established on a secondary highway later upgraded to a primary highway. Illegally established junkyards are not nonconforming junkyards.
5. Junk -Old or scrap metal, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof.
6. Main Traveled Way - The traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.
7. Interstate System - mean that portion of the National System of Interstate and Defense Highways located within the State, as now officially designated, or as may hereafter be so designated as Interstate System by the Department of Transportation, or other appropriate authorities. As to highways under construction so designated as Interstate highways pursuant to the above procedures, the highway shall be a part of the Interstate system for the purpose of this Article on the date and location of the highway has been approved finally by the appropriate Federal authorities.
8. Primary System - Means that portion of connected main highways, as

now officially designated, or may hereafter be so designated as primary system by the Department of Transportation or other appropriate authorities. As to highways under construction so designated as Federal-Aid Primary Highways pursuant to the above procedures, the highway shall be a part of the Federal-Aid Primary System for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate Federal or State authorities.

9. Unzoned Area - Shall mean an area where there is no zoning in effect.
10. Unzoned Industrial Area - An area where there is no zoning in effect and which is used primarily for industrial purposes as determined by the State and approved by the Federal Highway Administration. An unzoned area cannot include areas which may have a rural zoning classification or land uses established by zoning variances or special exceptions.
11. Visible - Means capable of being seen without visual aid by a person or normal visual acuity.
12. Industrial Zones - Those districts established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone. The provisions of [23 CFR 750](#) Subpart G relative to Outdoor Advertising Control shall apply insofar as industrial zones are concerned.

17.11 PROGRAMMING AND AUTHORIZATION

North Carolina's Junkyard Control Program may consist of one or any combination of the following:

1. Screening from the view of the motoring public through the use of natural objects, plantings, fences, or other appropriate means.
2. Removal and/or relocation of the junkyard to suitable legal site.
3. Recycling of junk and scrap metal by the State or by an authorized private agency.

Authorization to proceed with a junkyard control project may be given when the State submits a written request to the Federal Highway Administration which includes the following:

1. The zoning and validation of the legal status of each junkyard project.

2. The control measures proposed for each junkyard including, where applicable, information relative to permanent disposal sites to be acquired by the State.
3. The real property interest to be acquired in order to implement control measures.
4. Plans or graphic displays indicating
 - a. the location of the junkyard relative to the highway
 - b. the 1,000 feet control lines
 - c. property ownership boundaries
 - d. the general location of the junk or scrap material
 - e. any buildings, structures, or improvements involved.
5. Where screening is to be utilized; the type of screening, adequately detailed plans and cross sections or other adequate graphic displays which illustrate the relationship of the motorist, the screen, and the material to be screened at critical points of view.

17.12 PROCEDURES FOR SCREENING, REMOVAL OR RECYCLING OF JUNKYARDS

A. Screening

Every effort shall be made to screen the junkyard where the junkyard is to continue as an on-going business. Selection of junkyard sites to be screened shall be made by the Landscape Branch of the Department of Transportation.

The screens may be erected on the State's right of way or they may be erected outside the right of way on the real property owned or leased by the junkyard. In the latter case, the Department of Transportation is authorized to acquire fee simple title or any lesser interest in the real property for the purpose of erecting adequate screening. Acquisition may be by donation, by purchase, or by condemnation. In the event of acquisition of a permanent or temporary easement by purchase or condemnation, the property for the purpose of erecting a screen, just compensation shall be paid to the owner or owners of the property. Valuation of the site is to be established by an appraisal made by or through the Appraisal Section of the Department of Transportation in accordance with procedures set forth in Chapter 5 of the Right of Way Manual.

Negotiating diaries shall be kept on all projects and negotiations for the acquisition of the easements by donation, purchase, or condemnation shall be conducted in accordance with negotiating procedures as set forth in Chapter 12 of the Right of Way Manual, and as follows:

1. An initial contact with the junkyard owner and/or any parties who hold an interest in the property is to be made by a Right of Way Agent. The agent is to inform the parties that the junkyard has been selected for screening, explain thoroughly the screening project, and provide the parties with a letter informing them of their legal rights (see [FRM17-J](#)). The results of this contact are to be recorded in the Negotiating Diary (see [FRM17-K](#)).
2. All subsequent contracts made by the Right of Way Agent in connection with the screening project are to be recorded in the Negotiating Diary in the same manner as a normal right of way acquisition. A sample copy of the agreement used for acquisition of easements for screening is shown as ([FRM17-L](#)). In those cases where offers of compensation are made, the agent will provide the owner with a summary statement (see [FRM17-M](#)). Also, once a screening project has been completed and the junkyard brought into compliance with the Junkyard Control Act, the agent will forward to the owner of the junkyard a letter (see [FRM17-N](#)), advising him that he is in compliance and it will be his responsibility henceforth to stay in compliance.

B. Removal and/or Relocation

Nonconforming junkyards to be removed or partially removed to another site are also selected by the Landscape Branch. After this has been done and the necessary plans are prepared, the Right of Way Branch will acquire such interests in the property and/or relocation. The procedures for acquiring these interests will be the same as that for normal right of way acquisition.

C. Recycling

Consistent with the goals of the National Environmental Policy Act of 1969, recycling of junk and scrape is to be encouraged to the greatest extent practicable in the implementation of the Junkyard Control Program. Recycling should be considered in conjunction with other control measures. To facilitate recycling, junk, or scrap should be moved to an automobile wrecker, or a scrap processor, or put to some other useful purpose. This can be accomplished either through negotiation with the owner or by the Department of Transportation after making the necessary arrangements for the acquisition of the scrap from the owner.

17.13 RELOCATION ASSISTANCE

Relocation assistance benefits as provided for under the "**Uniform Relocation**

Assistance and Real Property Acquisition Policies Act of 1970" is available as follows:

1. The actual reasonable moving expenses of the junk, actual direct loss of tangible personal property, and actual reasonable expenses in searching for a replacement business or, if eligibility requirements are met, a payment in lieu of such expenses.
2. Relocation assistance in locating a replacement business.
3. Moving costs of personal property from a dwelling and relocation assistance in locating a replacement dwelling, provided the acquisition of the real property used for the business causes a person to vacate a dwelling.
4. Replacement housing payments if the acquisition of the dwelling is found by the Federal Highway Administration to be necessary for the Federally-assisted junkyard control project.

Procedures for administering assistance to relocatees will be the same as those outlined in Chapter 15.

17.14 DOCUMENTATION FOR FEDERAL PARTICIPATION

In order for the State to receive Federal participation, it is necessary for our files on each eligible junkyard to contain the following information:

1. Satisfactory evidence of ownership of the junk or junkyard or both.
2. Value or cost documentation (including separate interest, if applicable) including proof or obligation or payment of funds.
3. Evidence that the necessary property interests have passed to the State, and that the junk has been screened, relocated, removed, or disposed of in accordance with the provisions of this directive.
4. If a dwelling has been acquired by condemnation, evidence that the costs involved are not included in the State's claim for participation.

Chapter 18 TITLE VI COMPLIANCE PROGRAM

18.01 INTRODUCTION

The Right of Way Unit of the Division of Highways has prepared procedures in the compliance with the Standard Department of Transportation Title VI Assurances executed by the State Highway Commission in November 1971 and its policies and procedures developed in cooperation with the Federal Highway Administration to insure that no person is denied his rights on account of race, color, religion, sex, or national origin. These procedures in brief form are as follows: "North Carolina Division of Highways, in accordance with Title VI of the Civil Rights Act of 1964, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, sex, or national origin in consideration for an award." This statement shall be inserted in all solicitations for letters of interest, bids, proposals for contracts, etc.

18.02 TITLE VI COMPLIANCE OFFICER

The Right of Way Unit has designated the Assistant Manager of Right of Way as the Title VI Compliance Officer whose responsibilities will include but not be limited to:

- Coordination of the Title VI Compliance Program within the Unit
- Internal Review and Evaluation
- Compliant investigation
- Assuring that appropriate clauses as required by the Assurances are inserted in all documents specified within the Assurances
- Preparation of reports
- Hold staff meetings to keep the Right of Way Unit personnel informed on Title VI Responsibilities
- Assuring that the notification as required by the Assurances is inserted in all bids for work or material, and in adopted form in all proposals for negotiated agreements. Establishment of programs to encourage the involvement of minority contractors, consultants, fee attorneys, fee appraisers, property management firms, etc.

18.03 APPRAISALS

The Right of Way Unit of the Division of Highways contracts with independent Real Estate Appraisers on a personal service contract basis. Each appraiser under contract is required to have on file with the Appraisal Unit an Experience Questionnaire, Form 5.009, as shown as [FRM5-A](#) in Chapter 5 Forms. Employment of fee appraisers is not based on race, color, religion, sex, or national origin, but is based on certification with the North Carolina Appraisal Board, professional training, education, experience, evaluation of previous work, availability to complete assignment within project schedule time limits, and effectiveness as a witness in court. The responsibility for selecting and employing Fee Appraisers is that of the Area Appraiser, and subject to the approval of the State Appraiser. The Appraiser is required to comply with regulations relative to nondiscrimination in Federally assisted programs of the U. S. Department of Transportation, Title **49, C.F.R., part 21**. The "Required Contract Provisions For Federal-Aid Contracts", as shown as [FRM18-A](#), is incorporated into and made a part of the Appraisal Contract, Form 5.011, as shown as [FRM5-C](#) in Chapter 5 Forms. No appraiser makes any statement pertaining to race in the appraisal report. All comparable sales and other market data used in the report will be without distinction as to race, color, religion, sex, or national origin. The appraisers are aware that no statement pertaining to race can be made in an acceptable appraisal report. All appraisals are reviewed by Staff Review Appraisers who are instructed to be alert for any indication of discrimination; and, if such discovered, to return the appraisal for correction before it is accepted from the appraiser. Appraisals are reviewed in accordance with Department of Transportation and Federal Highway Administration policies and procedures and with the Uniform Standards of Professional Appraisal Practice (USPAP). A properly prepared and reviewed appraisal of fair market value of property, using the State, Federal and USPAP appraisal guidelines and procedures, eliminates the possibility of discrimination on account of race, color, religion, sex or national origin.

18.04 NEGOTIATION

The Right of Way Unit of the Division of Highways does not discriminate in the acquisition of right of way. Policies and procedures set forth by the Federal Highway Administration and as set out in the State's Right of Way Manual are adhered to by the Right of Way Unit to further insure that discrimination is not practiced in the acquisition of right of way in North Carolina. Upon assignment of a project and prior to any negotiation, the R/W Agent signs an affidavit on [FRM4-C](#) in Chapter 4 Forms, in that each claim file which states that he/she has no direct or indirect, past, present, or contemplated future personal interest in the parcels or in any benefit from the acquisition of such property. Likewise, when negotiations have been successfully completed, the Agent signs another affidavit on this same [FRM4-C](#) that states that (1) the written agreement secured

embodies all the considerations agreed upon between the agent and the property owner, and (2) the agreement was reached without coercion, promises other than those shown in the agreement, or threats of any kind whatsoever by either party. The Right of Way Unit operates on an approved appraisal procedure whereby the property owner is offered the exact amount of the appraisal which has been reviewed and approved for negotiations. Prior to the appraisal being made, the Agent makes an initial contact with the property owner during which the Agent presents the property owner with a Legal Rights Brochure, shown as [FRM4-G](#) in Chapter 4 Forms, which explains the legal rights of the owner as well as the acquisition procedures in general. In this brochure, it is stated that the Department of Transportation must "Treat all property owners and tenants impartially without regard to race, color, religion, sex or national origin". As previously stated, right of way claims are based on the amount of the approved appraisal. The amount of the offer will be set forth in a written Summary Statement/Offer to Purchase form, shown as [FRM10-B](#) in Chapter 10 Forms, which the Agent will present to the property owner or his/her representative when making the offer to them. The Agent is required to maintain accurate written records of all of the negotiations with the property owner and these become permanent parts of the claim files. The Raleigh Right of Way Office in Raleigh checks and reviews all right of way claims, whether they are settled or condemned, which have been submitted by the fourteen field offices, to insure that all acquisition procedures have been followed and properly adhered to and, further, that instruments of conveyance, documentation of negotiations and the amounts of offers and compensation are accurate. The negotiation procedures and required documentation previously set forth insures that all property owners in North Carolina are treated fairly and without prejudice regardless of race, color, religion, sex, or national origin.

18.05 TITLE ATTORNEYS

Local attorneys who practice in the counties where the proposed highway projects are located are contracted with to provide title examinations, certifications of ownership and the closing services for right of way acquisition claims. Selection is not based on race, color, religion, sex, or national origin.

18.06 RELOCATION

The Relocation Assistance Program does not discriminate against eligible persons in providing relocation advisory assistance or in making relocation payments. Procedures governing relocation assistance are consistent with **Federal Law 91-646** as amended, **N.C.G. S. 133-5** and with **49 CFR Part 24** Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The Relocation Unit may provide many types of information concerning a proposed project. Among the first requests for

information is from the Project Development and Environmental Analysis (PDEA) Unit which involves the preparation and submittal of a Relocation Report, as shown as [FRM15-E](#) in Chapter 15 Forms. Following the completion of the Relocation Report, additional information may be needed for the Public Hearing which will be furnished by updating the report based on information indicated on the public hearing map. Statements concerning the Relocation Assistance Program are presented at public hearings and [Relocation Assistance Brochures](#) are available to the public at these hearings.

The statement presented at the public hearing specifically sets forth the following: "the Division of Highways acknowledges that all replacement housing must be fair housing and open to all persons regardless of race, color, religion, sex or national origin. This is in addition to the requirement that replacement housing will be offered all affected persons regardless of their race, color, religion, sex or national origin". The public hearing statement also explains the services and payments available, the residential and business moves, the replacement housing and increased interest payments, and the right of a review of eligibility and/or payments to be received. The [Relocation Assistance Brochure](#), see [FRM15-EEE](#) in Chapter 15 Forms, explains the entire relocation assistance program. This brochure is presented to the all persons who will be displaced as a result of the construction of a highway project. Relocates who have particular problems are given special attention regardless of their race, color, religion, sex, or national origin. In certain instances where concerns or problems are known to exist, meetings have been held with minority groups so there would be a better understanding of their needs and desires.

The Raleigh R/W Office is made aware of any particular situations which might require such a meeting. If a person is dissatisfied with a determination as to his/her eligibility for relocation assistance payments or to the amount of payment offered, that person may request a review of his/her claim from the Manager of Right of Way. Procedures pertinent to this review are contained in Review Procedures, in Chapter 15 of this Manual.

18.07 PROPERTY MANAGEMENT

The phase of the right of way program dealing with property management involves several areas where civil rights compliance is necessary. These areas are listed below and the civil rights provisions, "Required Contract Provisions For Federal-Aid Contracts", shown as [FRM18-A](#) of this Chapter, have been incorporated into all agreements and contracts pertinent to these areas to insure compliance.

1. Property Rental - Where time permits, the rental property acquired for a project is generally handled by a Property Management Company employed by the Right of Way Unit.

In those situations where the property was owner/occupied and time permits for the rental of the property after being vacated by the original owner, a Property Management Company is secured who is reputable and generally handles comparable property in the area. In some areas it is difficult to secure a firm interested in handling rental properties for the Right of Way Unit due to the short-term nature of the rentals and the limited number of properties to be handled. A copy of the Management Agreement is shown in Chapter 14 Forms.

2. Sale of Improvements - When improvements acquired by the Department on a project are advertised for sale, the civil rights reference as follows is included in the advertisement: "The (Division of Highways) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U. S. C. 2000d. to 2000d. -5 and [Title 49, Code of Federal Regulations, Department of Transportation, Sub. Title A, Office of the Secretary, Part 21](#), Non-Discrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation, and will not be discriminated against on the grounds of race, color, religion, sex, or national origin in consideration of an award". This advertisement containing the above references appears in two consecutive issues of a daily or weekly paper generally circulates in the county in which the property is located. Any individuals, who may have previously expressed an interest in improvements on a project, are also sent a bid form and copy of the advertisement. A copy of the Bid Form is shown in Chapter 14 Forms.
3. Grave Removal - The Proposal and Contract for Grave Removal, as shown as [FRM14-U](#) in Chapter 14 Forms, is used for the removal from a project of an entire cemetery or portion thereof or several graves. In the removal operation, bids are solicited from qualified firms and contractors. This type of work is not generally participated in by all funeral establishments due to either a lack of interest in this type of work or a lack of equipment and manpower to accomplish the job. Contracts are awarded on the basis of the low bid and the solicitation of bids by advertising is handled similar to the advertisement for the sale of buildings in Item 2 above.
4. Rodent Control - These proposals and contracts are special in nature. Local extermination companies will be contracted for this type of work in order to secure bids. Due to the manner in which this work must be accomplished, continuing over an extended period of time, our limited experience indicates that most companies are not interested in bidding on this type of work. A copy of this Proposal and Contract for Rodent Control is shown as [FRM14-B](#) in Chapter 14 Forms.

5. Demolition - Demolition contracts, where Federal participation is involved, are handled the same as general construction projects with the same non-discriminatory provisions and practices applying to these proposals and contracts as apply to all projects advertised by the Roadway Design Unit of the Division of Highways. A copy of the Proposal and Contract for Demolitions is shown as [FRM14-L](#) and [FRM14-M](#) in Chapter 14 Forms.
6. Surplus Property - In the disposal of surplus property owned by the Division of Highways, the Federal Highway Administration must be given proper credit for the value of surplus property when a claim is processed with the profitable or unprofitable sale of the residue at a later date becoming the responsibility of the Division of Highways. In all instances where property is advertised for sale and/or bids are solicited, no discriminatory practices are employed by the Right of Way Unit and no persons are denied their rights of participation in the Federal-aid program. Procedures for the disposals of surplus properties are outlined in [FRM14-DD](#) of Chapter 14 Forms.
7. Asbestos Inspections, Abatement and Structure Clearings - In order to deliver asbestos free structures on highway projects to the successful roadway contractors, the Right of Way Unit has implemented a program whereby all structures acquired during right of way acquisition will be inspected for the presence of asbestos and if found, measures to remove or abate its presence in accordance with prevailing environmental requirements will be undertaken. Abatement of asbestos must be accomplished prior to the demolition or clearance of structures from the right of way by the Department or the roadway contractors. In order to accomplish the asbestos inspections, abatement and structure clearings, the Department may advertise for asbestos services on individual claims or use the services of contractors under open-ended asbestos services contracts approved by the Board of Transportation. A copy of the Agreement for Asbestos Inspections, Abatement and Structure Clearings is attached as [FRM18-B](#) in this chapter of the Manual.

18.08 RIGHT OF WAY CONSULTANT CONTRACTS

In order to meet acquisition workloads, the employment of right of way consultants may be necessary to accomplish the acquisition of rights of way on designated highway projects. The procedures for contracting right of way consultants are contained in the North Carolina Administrative Code at 19A NCAC 02B.0164 Use of Right of Way Consultants and are incorporated into Chapter 16 - Acquisition by Consultant Contract, of this Right of Way Manual. Provisions for Compliance with Title VI of the Civil Rights Act of 1964, as well as provisions for Equality Opportunity and Participation by Disadvantaged and Women-Owned Business Enterprises, are incorporated into the Proposal and Contract for Right of Way Consulting Services. A copy of this Proposal and

Contract for Right of Way Consulting Services is attached as [FRM18-C](#) of this chapter.

18.09 UNIT POLICIES

Qualified applicants from minority group persons for employment in the Right of Way Unit shall be considered along with other qualified applicants. A concerted effort is made by the Unit to employ qualified minority group persons. Periodic meetings are held with acquisition agents and Unit personnel at which time Title VI and Title VIII requirements pertinent to right of way acquisitions are reviewed.

CHANGE LOG

Version **2014.06.01**

Modified manual layout. Major updates to all content in all chapters.

Revisions **06/21/2014**

Modified Section 10.04 and Section 5.69

Revisions **06/22/2014**

Moved location of Change Log.

Revisions **04/21/2015**

Section 2.01 and 2.03 (revised Preconstruction to Field Support)
Section 2.04 (revised area negotiators from five to four)
Section 2.07 (Revised to delete oversight of title attorneys)

Section 3.03 (revised Preconstruction to Field Support)
Section 3.07 (re-written)

Section 6.02 and 6.05 (re-written)

Section 7.06, 7.07, 7.08, 7.09, 7.10, 7.11 (clause language modified)

Section 9.04 (re-written)
Section 9.06 (revised Preconstruction to Field Support)
Section 9.32 (Septic Systems) added
Section 9.33 (Ponds) added
Section 9.34 (Condominiums, Homeowner Associations, and Common Areas)
added

Section 10.07 (Updated Uneconomic Remnants) Section
10.20 (updated claims with BOT members) Section 10.23
(paragraph regarding utilities added at end) Section
10.25A (Acquisition from Airports) added
Section 12.04 (revised Preconstruction to Field Support)
Section 12.03 (revised to reflect exceptions to paying revenue stamps)

Section 14.23 (re-written)

Section 15.01 (added paragraph referencing MAP-21
Section 15.04C8 (changed 180 to 90)
Section 15.04D4 (deleted definition of household income)
Section 15.04K (added definition of household income)
Renumbered remaining items in 15.04
Section 15.23B, 15.23G (Amounts), 15.23H (Amounts),
Section 15.27 (changed 180 days to 90 days, changed amounts throughout)
Section 15.28 (changed section title and amounts throughout, modified 15.28C
verbiage);
Section 15.30B changed verbiage;

Section 15.32 Changed section title, 180 days to 90 days, changed amounts throughout
Section 15.33 Changed section title and amounts throughout
Section 15.33A changed verbiage, 15.33C changed verbiage
Deleted section on Less than 90 day Mobile Home Occupants
Section 15.34 and 15.35 changed amounts throughout
Deleted section on Delivery of relocation Checks
Renumbered 15.39 to 15.38,
General formatting/spell checking and renumbering revisions in Chapter 15.

Chapter 18 (general formatting, changed Branch to Unit)
Section 18.05 (re-written to reflect new procedure)
Section 18.08 (changed reference to Chapter 16 of R/W Manual)

Revisions 04/05/2016

Section 8.03 (ownership by persons revised took out “as well as in the acknowledgement form” to make uniform)

Section 9.04 (Changed to incorporate change in procedure to eliminate the need to have North Carolina Council of State approval to purchase contaminated right of way)

Section 9.09 (minor changes in the procedure for acquiring r/w agreement from Railroad- namely: “The Rail S&E Section will proceed with acquiring any engineering agreement that the Railroad requires, prior to any property acquisition.”

Section 12.02 (included State, Assistant State and Area Negotiator as those authorized to accept agreements on behalf of the Department)

Section 13.03 & 13.04 (combined forms FRM13-A and FRM13-D)

Section 14.19 deleted reference to FRM 14-KK and LL (forms no longer used)